

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
NORTHERN DIVISION

UNITED STATES OF AMERICA

v.

CRIMINAL CASE NO.
AMD-04-029

WILLIE MITCHELL,
SHELTON HARRIS,
SHELLY WAYNE MARTIN,
SHAWN GARDNER,

Defendants

VOLUME X OF XXXVII
Monday, October 6, 2008
Baltimore, Maryland

Before: Honorable Andre M. Davis, Judge
And a Jury

Appearances:

On Behalf of the Government:
Robert Harding, Esquire
Michael Hanlon, Esquire
On Behalf of Defendant Mitchell:
Laura Kelsey Rhodes, Esquire
Michael E. Lawlor, Esquire
On Behalf of Defendant Harris:
Gerard P. Martin, Esquire
Paul Flannery, Esquire
On Behalf of Defendant Martin:
Thomas L. Crowe, Esquire
James G. Pyne, Esquire
On Behalf of Defendant Gardner:
Adam H. Kurland, Esquire
Barry Coburn, Esquire

Reported by:
Mary M. Zajac, RPR
Room 5515, U.S. Courthouse
101 West Lombard Street
Baltimore, Maryland 21201

1 (Proceedings at 9:45 a.m.)

2 THE COURT: Good morning. We ready to proceed?

3 MR. HARDING: Yes, Your Honor.

4 THE COURT: Who do we have on tap, Mr. Harding?

5 MR. HARDING: Mr. Dobropolski.

6 THE COURT: All right. So we should take up Mr.
7 Martin's motion?

8 MR. MARTIN: It's actually Mr. Harding's motion. It's
9 sort of my motion but Mr. Harding is the one who filed it. The
10 motion in limine. But I'm the one who should be arguing it.

11 THE COURT: Good morning.

12 MR. MARTIN: Your Honor, I understood from your
13 comments last week that, you know, you were, it would be a tough
14 sell to convince you that this was not a conspiracy. I don't
15 concede that, Your Honor. I don't think that these statements
16 were made in the course of a conspiracy involving -- forgetting
17 the two defendants at the end of this table who have nothing to
18 do with this -- but involving the other two defendants, my client
19 and Mr. Mitchell.

20 But I would argue, Your Honor, that in addition to a
21 that, even if you did find that there was a conspiracy, these
22 statements that they want to introduce here were not made in
23 furtherance of the conspiracy. I think the Court is aware, the
24 government has to prove by a preponderance of the evidence that
25 the statements were made during the course of a conspiracy that

1 both Harris and Mitchell were part of.

2 Here, Your Honor, as you know, although Harris had been
3 arrested, although Harris had been arrested for something
4 different but he was nevertheless in jail at the time. The other
5 two defendants were also incarcerated at the time.

6 Other than Mr. Dobropolski's statements, which I tell
7 you, Your Honor, are I believed stretched to the maximum by the
8 government for purposes of this motion, there is no evidence that
9 there was a knock and rob drug dealer's conspiracy that existed
10 in September of 2003. Furthermore, there's no evidence that Mr.
11 Harris would have committed or did commit any overt act in
12 furtherance of any such conspiracy involving Mr. Mitchell.

13 And any of the later statements that we just learned
14 about two weeks ago, the statements that were in these tapes and
15 in the DEA 6's, the meetings after Mr. Harris was released from
16 jail, those aren't in furtherance of the conspiracy because
17 Dobropolski at that time was an informant and United States v.
18 Chase says that those statements of that nature cannot be in the
19 nature of statements in furtherance of a conspiracy.

20 The test, I think, Your Honor, is that there must be
21 substantial independent evidence, I think that's what Shores
22 said, in order to prove the conspiracy. In Shores, you'll
23 remember, Your Honor, they had polygraph examination which the
24 witness had passed, and the witness had given him very, extremely
25 detailed accountings of each of future events that were going to

1 take place and they all came true. And here the witness'
2 accounts are vague about what was supposed to happen and what was
3 going to happen. And I think, I'm paraphrasing, but I think he
4 said, I think they wanted me to be sort of an enforcer for them,
5 maybe. That's one of the statements, that's my best paraphrase
6 of that statement, Your Honor.

7 In addition, Your Honor, you have Mr. Dobropolski
8 trying by Sergeant Giganti, Detective Giganti's own testimony, a
9 dozen times or so to get corroboration, and failed. So you don't
10 have that, that comfort that Shores had as to the reliability of
11 these statements and as to the reliability as to why there was a
12 conspiracy that existed.

13 And this latter information, the information about the
14 tapes and all that was, was withheld from us until a point in
15 time in which I would argue it was too late for us to do anything
16 about. I could explain a little bit of that to the Court. But I
17 think that plays into your decision here as well.

18 You know, our tape enhancer says he can do no more
19 because he doesn't have time. He's the only one we could find
20 and it would take him, we would be into November before he could
21 enhance the last tape that we wanted enhanced, which was actually
22 the first tape they tried to make with Mr. Harris on October
23 27th. So we're not going to be able to get that enhanced.

24 I think that that delay has inured to our detriment,
25 greatly to our detriment given what I believe we were able to do

1 with one of the other tapes, Your Honor.

2 We didn't get them in the order that they were made for
3 some reason. I don't know why. We didn't. So the first one we
4 got, we sent to get enhanced, and that's the one we were able to
5 get enhanced. We can't get the others done.

6 Even if you were to find, Your Honor, that there was
7 this conspiracy that existed between Mr. Harris and Mr. Mitchell
8 in September of 2003 when they were locked up with Mr.
9 Dobropolski at different places, but in that same one month
10 period in September, last August of '03, September of '03, the
11 statements that Mr. Dobropolski, that they're going to ask him
12 about were not in furtherance of the conspiracy.

13 And this prong of the test in this circuit is not to be
14 broadly construed. The Urbanik case says you must narrowly
15 construe that prong as to whether they are in furtherance.
16 Urbanik went to say, Idle chatter or banter is not in furtherance
17 of the conspiracy.

18 The government says Mr. Harris was trying to recruit
19 Mr. Dobropolski. So his bragging about his past, his past, I
20 guess, they used the term "work", quote-unquote, you may have
21 seen that, Mr. Dobropolski uses the term "work" to mean murders,
22 that Mr. Harris was bragging about his work in an effort to
23 impress and recruit Mr. Dobropolski. That I think is the
24 government's theory as to why this is a conspiracy that
25 continued.

1 THE COURT: Mr. Martin, can you tell me precisely, and
2 I know it's in the record somewhere, but I need you to tell me,
3 or Mr. Harding, what statements are we talking about, actually?

4 MR. MARTIN: Well, I can tell you what I think they
5 are, Your Honor.

6 THE COURT: Okay. All right.

7 MR. MARTIN: They are that, Mr. Harris told me that he
8 put some work in for Bo before. He asked me if I knew the former
9 heavyweight champion.

10 THE COURT: I'm sorry. Harris told Dobropolski --

11 MR. MARTIN: Right.

12 THE COURT: That he, Harris, had put some work in for
13 Mitchell.

14 MR. MARTIN: Yes.

15 THE COURT: Okay. That's statement number one.

16 MR. MARTIN: And he tied that to, ask him if he knew
17 who the heavy weight champion was. And Dobropolski said he knew
18 who he was but he didn't know much about him. And then he said
19 his friends began to disappear.

20 THE COURT: Harris said?

21 MR. MARTIN: Yes. This is what Dobropolski says Harris
22 said.

23 THE COURT: Okay.

24 MR. MARTIN: His friends began to disappear. People
25 started dying around him. His friends started to get killed.

1 And he told me people, around this boxer started dying and he was
2 the one that killed them. That's what Dobropolski says over this
3 two or three week period he got out of Mr. Harris.

4 THE COURT: All right. Now, they are clearly
5 admissible against Mr. Harris.

6 MR. MARTIN: Absolutely, Your Honor.

7 THE COURT: Okay.

8 MR. MARTIN: And if this information has been known to
9 us when we were filing his motions for severance, this would have
10 been something that we would have been arguing with you.

11 Unfortunately, you're put in the position now of us having
12 invested three weeks in a trial and here we are.

13 THE COURT: I'm still missing something. You are
14 arguing to exclude statements that are admissions as to Mr.
15 Harris?

16 MR. MARTIN: I'm arguing that when you consider, I'm
17 arguing, I guess I supposedly, the argument is theirs because the
18 statements are more -- but there's also a statement from Mr.
19 Mitchell that Mr. Dobropolski wants to enter, in which he says
20 that Mr. Mitchell --

21 THE COURT: Okay. We'll get to that. I'm just trying
22 to take them one at a time.

23 MR. MARTIN: Well, I took it upon myself to respond to
24 the motion because I didn't see anybody else doing this.

25 MR. LAWLOR: Can I jump in, Your Honor?

1 THE COURT: Mr. Lawlor, please. You'll get a chance.
2 You'll get a chance. Let me just hear from Mr. Martin.

3 MR. MARTIN: I'm trying to present the argument that
4 they would present as well. We're kind to doing this as a
5 unified front.

6 THE COURT: That's fine. I just want to make sure --

7 MR. MARTIN: I understand. I'm not trying to confuse
8 you.

9 THE COURT: No. It's not confusing at all.

10 MR. MARTIN: There is a later statement by Mr.
11 Mitchell.

12 THE COURT: All right. Let's go to that one, then.

13 MR. MARTIN: There's a statement that Mr. Mitchell made
14 in the jail.

15 THE COURT: What time period? Still '02?

16 MR. MARTIN: '03.

17 THE COURT: '03. Mr. Harding is shaking his head, but
18 go ahead.

19 MR. MARTIN: Well, the statements were made in '03.
20 You disagree with that? When were they made? '02? I'm sorry,
21 Your Honor.

22 THE COURT: All right. So Mitchell, Mitchell says --

23 MR. MARTIN: Yes. That's right. The statements were
24 made in '02. I'm a year off.

25 THE COURT: All right. So Mitchell said to the witness

1 in '02, what?

2 MR. MARTIN: That Mr. Harris had, quote, "put some work
3 in for him." And then the witness says that meant that Mr.
4 Harris had killed somebody for him.

5 THE COURT: So Harris told the witness that he put in
6 some work for Mitchell and Mitchell told the witness that Harris
7 had put --

8 MR. MARTIN: The use of the word "work" is Mr.
9 Dobropolski's word.

10 THE COURT: Right. I got that. Okay.

11 MR. MARTIN: That's what the government, that's the, I
12 guess, the universe of the statements that the government wants
13 to get in during this period. And the issue becomes, were they
14 in furtherance of a conspiracy?

15 THE COURT: Okay.

16 MR. MARTIN: In other words, what we're saying is that
17 these statements are idle chatter that took place during the
18 course of conversations where Mr. Dobropolski admits, in
19 statements to the police that we have, that he was extracting
20 this information. Mr. Dobropolski was on a mission to get
21 himself out of jail. And --

22 THE COURT: In '02?

23 MR. MARTIN: Yes, Your Honor. When he went into jail,
24 he had filed a motion to get out. He'd filed a motion with Judge
25 Byrnes. As they often do in state court, as you know, Judge

1 Byrnes said, I'll hear it in a year, the motion's sitting here
2 now, you go off to prison and I'll hear the motion in a year.
3 Common practice in the state court system.

4 THE COURT: Right.

5 MR. MARTIN: So Mr. Dobropolski goes to jail. And my
6 argument is, he's on a mission at that point. He needs to find
7 out something to help himself. And he, he admits that he spent
8 two weeks or more, quote, his word, he uses the word "distract",
9 but if you read the transcript it's extract, he was extracting
10 statements from these people. And the theory is he was trying to
11 gain their trust so they would tell him things.

12 The government's theory is that Mr. Harris just started
13 telling him these things.

14 THE COURT: Well, I think the government says in order
15 to recruit him.

16 MR. MARTIN: That's what they say. But Mr. Dobropolski
17 says, I had to gain his trust, and it took a two week period. So
18 you have to weigh this testimony at this stage.

19 THE COURT: Okay. And there's no Sixth Amendment issue
20 floating around here, right? You don't claim that Mr.
21 Dobropolski violated any of Mr. Harris's Sixth Amendment rights
22 because --

23 MR. MARTIN: No.

24 THE COURT: Right. These charges, I mean, this
25 indictment hadn't even been filed.

1 MR. MARTIN: That's not a claim, Your Honor. We're
2 talking strictly in the parameters of whether or not this
3 statement was in furtherance of a conspiracy. They want to
4 introduce these confessions without Mr. Harris being permitted
5 through cross examination to elicit -- in other words, let's just
6 focus on the statements that Mr. Mitchell is going to make, that
7 they're going to put in for Mr. Mitchell.

8 They want to put in a statement to Mr. Mitchell that he
9 did some work for him and, you know, they want to do this without
10 us being able to have the ability to bring in the whole of what
11 the conversations were between the three of them. I just think,
12 we've talked about that.

13 THE COURT: Why wouldn't you be able to bring in the
14 whole?

15 MR. MARTIN: Well, because, because the statements are
16 incriminatory to my client that he supposedly made. So I'm in a
17 joint trial. For instance, if you allowed them to just, Mr.
18 Harris to just say, just say that some work was put in for him,
19 then I wouldn't be getting the benefit of the argument that Mr.
20 Mitchell was the one who was up to all this. It's a difficult
21 concept for me to explain to the Court right here.

22 Perhaps I can get back to what I'm really talking about
23 here, which is that these statements on both sides are not in
24 furtherance of a conspiracy, Your Honor. It's idle speculation.

25 The witness says, and he will say, Your Honor, that

1 they are were BS'ing over a period of weeks. He was trying to
2 gain Mr. Harris's trust. And in a clear import, when you read
3 what he has to say, is that after he gained his trust is when Mr.
4 Harris told him about these things. It would be, stretch
5 credibility, Your Honor, to assume that Mr. Harris just started
6 spouting to a guy he didn't even know, especially when you see
7 this guy, Your Honor, a skinhead white guy with tattoos all over
8 him, that you're going to wonder would Mr. Harris just start
9 spouting that, I committed these murders? That doesn't make any
10 sense, Your Honor. Mr. Dobropolski himself says, Before he told
11 me anything I had to get his trust.

12 So these are idle conversations at that point. And not
13 made in furtherance of any conspiracy.

14 It were BS'ing. He was bragging about what he knew.
15 He, Dobropolski, was bragging about who he knew and what he knew
16 in his past to Harris and Harris was saying to him, Hell, I can
17 fight real good, too. He said it took days and weeks to get the
18 witness to gain his trust and only then did he, quote, "sort of
19 describe the double murder."

20 I'm arguing, Your Honor, that these conversations were
21 casual asides to them. They were casual asides to their talks
22 about Park Heights, which is what Mr. Dobropolski's going to say
23 they were doing. The Eubanks case says that casual admissions of
24 culpability to someone he individually trusted are not statements
25 in furtherance of a conspiracy.

1 So even if there were some later entrance of Mr.
2 Dobropolski into a conspiracy with Mr. Harris and Mr. Mitchell,
3 that would not convert these prior statements into statements in
4 furtherance of a conspiracy. The Shores case, Your Honor, which
5 the government heavily relies on, in fact totally relies on, said
6 in that case the facts were overwhelmingly strong and the Court
7 still said that the issue of in furtherance of conspiracy was a
8 close question.

9 Here, unlike Shores, the Harris statements were not
10 made in the course of conversations where Harris was seeking to
11 get Dobropolski to work for them, but were cobbled together over
12 a period of weeks, Your Honor, during which Dobropolski admits
13 that he was extracting information from Harris. It's a trust
14 issue, Your Honor, and common sense would tell you, as I think I
15 just said a few minutes ago, that Mr. Harris is not going to just
16 suddenly invite Mr. Dobropolski into some conspiracy with him.

17 And Mr. Mitchell isn't even involved in this at this
18 time. It's not going to happen, Your Honor. Common sense tells
19 you that that kind of conversation just doesn't occur, that Mr.
20 Harris is just not going to suddenly open up to some guy,
21 especially when the guy admits that he was mining information
22 from him, he was extracting information from him.

23 THE COURT: Why does it matter? It's reasonably clear
24 that, accepting the government's theory at face value, that these
25 statements were intended to induce Mr. Dobropolski to do the work

1 of the alleged conspiracy and, therefore, were in furtherance of
2 the conspiracy.

3 MR. MARTIN: Your Honor, they're all in jail.

4 THE COURT: Why --

5 MR. MARTIN: They're all in jail at the time.

6 THE COURT: I understand that. I understand that. Let
7 me ask my question.

8 MR. MARTIN: I'm sorry.

9 THE COURT: Why does it matter that Dobropolski took a
10 couple of weeks to earn the trust and confidence of the
11 coconspirators? That would almost be an absolute necessity
12 because, as you say, a coconspirator's not going to talk to just
13 anybody. So I don't understand the connection between
14 Dobropolski's working as an informant and earning the trust of
15 the declarant. That doesn't seem to me to vitiate the character
16 of the later statements if, in fact, they were made in
17 furtherance of the conspiracy.

18 MR. MARTIN: Your Honor, if he's an informant, which he
19 wasn't at that time. If he's an informant, they're not. The
20 Fourth Circuit law says it's not a statement in furtherance of a
21 conspiracy if he's an informant. If he's put there by the
22 government to do that. But as I told you, he wasn't at that
23 point. He was working on his own at that point.

24 The issue is whether or not --

25 THE COURT: Wait. Wait. You're saying the Fourth

1 Circuit rule is that --

2 MR. MARTIN: There's a Fourth Circuit case, Your Honor,
3 that --

4 THE COURT: I understand you can't conspire with an
5 informant, obviously. But why can't you make a statement to an
6 informant, just as you can make a statement to anybody, that is
7 in furtherance of a conspiracy? You can make a statement to law
8 enforcement that's in furtherance of the conspiracy.

9 MR. MARTIN: Your Honor, United States, United States
10 v. Chase, which is the case that I cited to Your Honor somewhere
11 in my brief. I can't tell you exactly where.

12 THE COURT: All right.

13 MR. MARTIN: United States v. Chase, Page Three of our
14 brief, is the case, somewhere in United States v. Chase it says,
15 it's well established that one who acts as a government agent and
16 enters into a purported conspiracy, in his secret role as an
17 informer cannot be a conspirator.

18 THE COURT: Right.

19 MR. MARTIN: How can a statement to him be made in
20 furtherance of a conspiracy?

21 THE COURT: No. Because a statement in furtherance of
22 a conspiracy has that quality quite apart from the listener or
23 the target of the statement. You can make a statement in
24 furtherance of a conspiracy on television to a camera. You have
25 no idea who's listening or watching.

1 MR. MARTIN: That's true.

2 THE COURT: Yeah. So if Dobropolski either with prior
3 agreement with the government or in hopes of striking an
4 agreement with the government, induced trust from Mr. Mitchell
5 and Mr. Harris, it seems to me that that's not at all material to
6 the question of whether their later statements to him, he having
7 earned their trust, in fact, were made in furtherance of a
8 conspiracy.

9 MR. MARTIN: I appreciate Your Honor's argument, but
10 that's not my argument.

11 THE COURT: Okay.

12 MR. MARTIN: Whether he was an informant or not is
13 really aside from what I'm saying.

14 THE COURT: Okay.

15 MR. MARTIN: I am saying that these particular
16 statements, if you listen to the witness, were casual, idle
17 chatter, conversation, all part of them getting to know one
18 another. They were not part of any conspiracy. They were just
19 casual, idle conversation. That's what Mr., that's the gist of
20 what I read and everything Mr. Dobropolski said.

21 And the cases in the Fourth Circuit say that if that's
22 the case, then they are not statements in furtherance of the
23 conspiracy. And they say, the Urbanik case says that case has to
24 be strictly construed. We're not going to be loosey-goosey about
25 this. You have to be pretty sure.

1 Your Honor, I think at a minimum, you'll have to hold a
2 hearing and listen to Mr. Dobropolski before you decide that. I
3 know you don't want to do that.

4 THE COURT: I don't think I do. Again, taking your
5 presentation at face value, you said that there was a period of
6 time during which Mr. Harris and Mr. Mitchell did not make
7 statements that the government intends to use.

8 MR. MARTIN: I said they were extracted over a period,
9 over a period of time. That's what I said.

10 THE COURT: Okay. But I think you were very clear, and
11 that's what prompted my --

12 MR. MARTIN: If I was clear, then I misstated. My
13 argument is, they were extracted by Mr. Dobropolski over a two or
14 three week period when they were incarcerated as he got Mr.
15 Harris to trust him.

16 THE COURT: Well, that's my point. Even if I were to
17 say that during the first week, just to use round numbers, the
18 first seven days, let's say, I were to say, All right, everything
19 that's said to each other in the first seven days is idle
20 chatter. All right? But now at some point trust ripens. And
21 now Mr. Mitchell and/or Mr. Harris are making statements,
22 according to the government's theory, with the aim of inducing
23 Mr. Dobropolski to become a member of the conspiracy, to do work
24 for them, to whatever.

25 I don't think just because there's idle chatter in the

1 first two or three or four or five days, that what's said on Days
2 14, 15, 16 and 17 necessarily constitutes idle chatter.

3 MR. MARTIN: Your Honor, again, it's a nice theory.
4 But you don't know and I don't know, until we hear Mr.
5 Dobropolski, whether it was the first two, three, or four or five
6 days. His grand jury testimony is, as you are aware, most grand
7 jury testimony is pretty vague. It's clear that he was
8 extracting information from him over a period of time. And we
9 don't know exactly when in that course of events these statements
10 were made.

11 But accepting at face value what you said, if they were
12 made in the first seven days, then they're not in furtherance of
13 the conspiracy and they shouldn't come in.

14 THE COURT: In which case I would instruct the jury to
15 disregard them as I'm going to instruct -- but I can't try the
16 case. You know, that's what the Fifth Circuit used to require.
17 You had a trial on coconspirator statements and then you had a
18 real trial.

19 MR. MARTIN: I understand. And we all used to file
20 that motion in this court and it was denied routinely. And I
21 understand all that, Your Honor.

22 But this is the seminal, most important witness in this
23 case.

24 THE COURT: I doubt that.

25 MR. MARTIN: This is a witness about which, the

1 government's known this stuff forever. Everybody would have had
2 a more serious, more pointed motion for severance back when you
3 were considering these issues. You even at one point said at
4 some point during one of these hearings, is there anything else
5 that we should know about that bears on severance? None of us
6 knew about it.

7 THE COURT: In fact, I severed the trials.

8 MR. MARTIN: Well, you did, but not for this reason.

9 THE COURT: Well, not for this reason. But I severed
10 the trials.

11 MR. MARTIN: But a trial like this necessarily has
12 problems like this, Your Honor. And unfortunately, we're now
13 stuck here. After three weeks, nobody wants this thing to go
14 haywire and have to do it over again. And I suggest to Your
15 Honor that this is a very, very important issue in this case.

16 And the government even chooses, Your Honor, to use
17 these later statements that were obtained by Mr. Dobropolski
18 after he was released from prison. After they got him out of
19 jail and they went and sat with Mr. Harris and taped them, they
20 want to use those statements as further evidence of this
21 conspiracy they say existed. And that's just not fair. They
22 didn't even give us that information, Your Honor. There has to
23 be, ought to be some sanction for that.

24 There ought to be, you ought to be not considering that
25 evidence with respect to whether or not there was a conspiracy or

1 whether these statements were made in furtherance of that
2 conspiracy. It's just not right. And no matter how many times I
3 say it, Your Honor, I'm going to say it again, every one of these
4 DEA 6's has a line on the bottom of it that says "prosecutor."
5 They were made four years ago and we didn't get them. We only
6 got some of them ten days ago.

7 And now the government files its motion in limine, and
8 what do they rely on? Well, this conspiracy existed and these
9 statements that were made by Mr. Harris after they were released
10 from prison are proof of that conspiracy.

11 THE COURT: By the way, when did you learn that Mr.
12 Dobropolski was a government witness?

13 MR. MARTIN: When I got Mr. Coburn's, whenever you
14 ordered Mr. Coburn to turn over that stuff to us, the grand jury
15 stuff. I got some of it. But I didn't get any of the DEA-6's
16 and I didn't get any of the tapes. All I got, I got the grand
17 jury and the statement he made to the police. And I suppose I
18 got his handwritten letter to Judge Byrnes when he first came up
19 with this information and wrote to Judge Byrnes.

20 I think that's what I got. I may have gotten his
21 second letter to Judge Byrnes, but I didn't get the later
22 information. And I'm not claiming that I did. I read the grand
23 jury testimony when Mr. Coburn made it available to me. And I
24 didn't read it the way the government reads it now. I still
25 don't. That's part of my argument, is I don't think these are

1 statements in furtherance of the conspiracy. I think this is
2 idle chatter, casual conversations.

3 Now, in the middle of trial, we're presented with this
4 motion in limine, and on top of it presented with an argument
5 that says that these later conversations about which we were
6 never told are support for that. And I just don't think that's
7 right, Your Honor.

8 I think this is such a seminal and important issue that
9 this is one of those things, with all those hearings we had, that
10 we tried to ferret out. You didn't want to have any of these
11 arguments during the course of the trial. That's why we had so
12 many hearings. But here we are, because of something that we
13 didn't know about.

14 And I suggest to Your Honor that, in the Fourth
15 Circuit, this issue of whether they're in furtherance of the
16 conspiracy -- you know, you and I could argue forever about
17 whether this really was a continuing conspiracy. You'll always
18 win that argument.

19 I'm going to the second part, which is, even if it was,
20 Your Honor, these statements weren't made in furtherance of it.
21 And you should not allow the government to do this in this case,
22 Your Honor. I suppose, as you said, I'm making Mr. Mitchell's
23 argument to some extent because there's more statements made by
24 my client than there are by him. But nevertheless, I'm making
25 it. And it counts for everybody, I think.

1 THE COURT: All right. It's very odd that Mr. Martin
2 and Mr. Gardner don't seem to be weighing in, although I suspect
3 they may have something to say in a moment.

4 Let me hear from Mr. Lawlor and then I'll hear from Mr.
5 Harding.

6 MR. MARTIN: Thank you, Your Honor.

7 THE COURT: Thank you, Mr. Martin.

8 MR. LAWLOR: Your Honor, I apologize. I didn't mean to
9 interrupt Mr. Martin. I just wanted to alert the Court that Mr.
10 Martin was, as he said, sort of arguing for both Mr. Mitchell and
11 Mr. Harris, Mr. Mitchell as to Mr. Harris's statements and Mr.
12 Harris as to Mr. Mitchell's statement.

13 I will not repeat, obviously, what Mr. Martin just
14 said. I would rather just adopt the lion's share of his
15 argument. Our objection, obviously, is to the statements that
16 Mr. Harris made to the witness, whose name I cannot pronounce.
17 And it is a Bruton issue because Mr. Harris said, in essence,
18 narrowing it down to its essence, I killed these two people on
19 behalf of Bo or at Bo's behest. Hence the Bruton issue, because
20 he doesn't just say, I killed these two people.

21 And I think the government's motion was made to
22 introduce the statements both as to what Mr. Harris said
23 concerning what he did and the fact that he did it at Bo's
24 behest, which is the confrontation problem for Mr. Mitchell.

25 I agree with Mr. Martin that, number one, the Court

1 ought to have a hearing outside of the presence of the jury.

2 Now, I understand --

3 THE COURT: I'm sorry. Mr. Martin represents that
4 separate from Mr. Harris's statement that he did it for Mr.
5 Mitchell, we have Mr. Mitchell's statement that Mr. Harris did it
6 for Mr. Mitchell or at Mr. Mitchell's direction.

7 MR. LAWLOR: I think, I think, and you know, the
8 statements will speak for themselves, the government can correct
9 me if I'm understating this, but we would submit to the Court
10 that Mr. Harris's statements are more explicit than are Mr.
11 Mitchell's. Given that --

12 THE COURT: But they both used the word "work."

13 MR. LAWLOR: They both do use the word 'work.' And Mr.
14 Harris, I think, goes into some greater detail about what he did
15 and then says he did it at Bo's behest. And then Mr. Mitchell --

16 THE COURT: Confirms that.

17 MR. LAWLOR: -- for lack of a better term. I wouldn't
18 characterize it like that, but I won't quarrel with the Court's
19 word.

20 THE COURT: Okay.

21 MR. LAWLOR: Your Honor, I agree with Mr. Martin's
22 submission to the Court that given the nature of the evidence and
23 the nature of this witness, that the Court ought to consider a
24 hearing outside of the presence of the jury, both to consider the
25 factors that the Court needs to find under 801(d)(2)(e), but also

1 I think it's important given the gravity of this evidence and its
2 importance, to assess the credibility of Mr. Dobropolski, because
3 I think the Court could be satisfied that, given a credible
4 witness, I find that the five, if there are five, factors under
5 801(d)(2)(e) are present hypothetically, but that the witness is
6 so incredible that I won't permit the evidence.

7 We would ask the Court to hold a hearing on this issue
8 outside of the presence of the jury, not just to assess the
9 witness' credibility, but also to determine, based on the entire
10 context of the lead up to the statements, the statements
11 themselves, whether or not they were, for example, in furtherance
12 of the conspiracy.

13 And on that point, Your Honor, just to clarify. And I
14 think Mr. Martin made this point. But he's using the word "idle
15 chatter." And I thought, and I hope I didn't misconstrue this,
16 but the Court was thinking of the idle chatter as the two weeks
17 of conversation leading up to Mr. Harris's critical comment, I
18 killed, and again I'm paraphrasing, but if Mr. Harris said, I
19 killed these two people at Bo's behest. Our submission is that
20 that statement, even that statement is not in furtherance of the
21 conspiracy. It is boasting about past criminal acts and, you
22 know, we reject it.

23 It seems to us that the government sort of reaches into
24 a bag of rationale as to why a statement given to a
25 non-conspirator well after the fact is in furtherance of the

1 conspiracy. And they reached into the bag and came up with the
2 theory that, well, they were recruiting Mr. Dobropolski.

3 The problem with that, Your Honor, is other than the
4 government's submission that that's what was going on here,
5 there's no evidence to support that theory, which is why we
6 submit to the Court that these weren't in furtherance of the
7 conspiracy. But the critical statement itself, again,
8 paraphrasing, Mr. Harris's statement, I killed these two people
9 at Bo's behest, is not a statement in furtherance of the
10 conspiracy but rather just boasting, idle chatter, as Mr. Martin
11 would say, boasting about past criminal acts, but certainly not
12 in furtherance of the conspiracy.

13 And in light of that, we feel that the admission of the
14 statement would violate Mr. Mitchell's confrontation rights.
15 It's not admissible under 801(d)(2)(e) and we would ask the Court
16 to exclude it.

17 THE COURT: Thank you, Mr. Lawlor. Unless you have
18 more to add, Mr. Crowe, I'll deem you to have adopted all of the
19 arguments.

20 MR. CROWE: Your Honor, just very briefly. The Court
21 had wondered why we had not weighed in. And the reason that Mr.
22 Pyne and I have not weighed in as Mr. Martin's counsel is that
23 Mr. Martin is not mentioned either by his name, by street name,
24 or by description as being involved in this matter at all.

25 THE COURT: Of course, it's still evidence against Mr.

1 Martin if the jury finds that he's a member of the conspiracy.

2 MR. CROWE: It would still be evidence against Mr.
3 Martin, but Mr. Martin's name is not mentioned. And indeed, the
4 fact that his name is not mentioned might be something that we
5 would argue to the jury.

6 Again, this is the McCaffity/Brown killing that they're
7 speaking about, and this is, this is not a matter which Mr., my
8 client has been alleged to be involved in.

9 The only other quick point --

10 THE COURT: But let's talk about that for just a
11 second. It's the McCaffity/Brown murders but that murder is said
12 to be an act, those murders are said to be acts of racketeering.

13 MR. CROWE: Indeed they are. But we feel, but I mean,
14 I don't want to go into my theories of the case at great length.
15 But it's our feeling that the fact that this matter is restricted
16 to two of the people and it does not involve our client is a
17 matter which reflects more favorably on him than unfavorably.

18 THE COURT: All right. I'm just concerned -- well, I
19 guess I'm not concerned.

20 MR. CROWE: Your Honor, in that case I'll object to it.
21 I'll object to it, also.

22 THE COURT: No, really. If, if the government is able
23 to prove two acts of racketeering activity by any defendant and
24 if the jury finds the conspiracy otherwise established, aren't
25 you concerned about that?

1 MR. CROWE: I am concerned about it but my primary
2 concern is their proof that my client was involved.

3 THE COURT: Was a member of the conspiracy.

4 MR. CROWE: Was a member of the conspiracy. The only
5 other point I would make, Your Honor, is that I think perhaps the
6 leading Fourth Circuit case on statements in furtherance of is
7 the Shores case, which has been cited many times by counsel on
8 both sides. I would point out that in that decision, Judge
9 Phillips very pointedly notes that the district judge in that
10 case had a hearing out of the presence of the jury to make a
11 determination of whether the statement was made in furtherance of
12 the conspiracy.

13 We think that's one reason that such hearings are going
14 to be necessary for this witness and for Mr. Montgomery, who's
15 coming on later.

16 THE COURT: Thank you, Mr. Crowe.

17 MR. KURLAND: Good morning, Your Honor.

18 THE COURT: Good morning.

19 MR. KURLAND: Your Honor, I'll be careful not to repeat
20 anything that some of the other defense counsel said. But a
21 couple of things that specifically relate to Mr. Gardner's
22 position here.

23 If these statements come in simply as, as admissions,
24 if they're not found in furtherance of the conspiracy, that will
25 obviously lead to a severance motion with Mr. Gardner.

1 We are concerned about the point that the Court made.
2 Even though Mr. Gardner is not charged and it's not the
3 government's theory that he was in any way personally involved in
4 the, in the McCaffity/Brown killings, and there's no evidence of
5 that, he's not charged in those separate counts, it is, though,
6 part of the racketeering charge. So the coconspirator aspect of
7 it certainly affects Mr. Gardner.

8 And just to amplify, to put a little bit different
9 focus on the way that the other defense counsel have argued the
10 issue. And that is the Court -- and I think this kind of lends
11 itself to at least a hearing outside the presence of the jury --
12 the finding that the Court has to make with respect to whether
13 the statements are in furtherance of the conspiracy, under
14 Bourjaily the Court has to make a finding by the preponderance of
15 the evidence. That isn't simply just, well, could a reasonable
16 jury find, and kind of punt it as a jury question. That's a
17 significant finding.

18 THE COURT: Well, but I have -- I'm sorry to cut you
19 off.

20 MR. KURLAND: That's all right.

21 THE COURT: But nothing's been proffered to me from the
22 defense side apart from legal argument.

23 MR. KURLAND: Well, Your Honor --

24 THE COURT: So I mean, in other words, the argument is,
25 Judge, this was idle chatter, they were locked up together. All

1 you, all you have, as I understand it, you, the defense, in terms
2 of the need to make a finding by a preponderance, are the
3 undisputed facts that Mr. Dobropolski was locked up with them,
4 they had conversations. And the defense argument is that all of
5 it was idle chatter.

6 So in terms of facts, what I have before me are those
7 undisputed facts and the government's particular spin on those
8 facts, and the proffer of what Dobropolski is going to say.

9 MR. KURLAND: Well, Judge, I would, I think that's
10 slightly --

11 THE COURT: What else is there?

12 MR. KURLAND: -- incomplete. The government is the one
13 that has to establish by a preponderance of the evidence, has to
14 convince the Court by a preponderance --

15 THE COURT: Of course.

16 MR. KURLAND: -- that the statements are part of the
17 conspiracy. With respect to the thing that probably needs to be
18 dealt with outside the presence of the jury.

19 THE COURT: What is that?

20 MR. KURLAND: Is the fact that this is not a
21 situation -- I understand the recruiting theory. I understand a
22 bunch of cases and I understand the theory, that if you're trying
23 to recruit someone into the conspiracy, even if they aren't a
24 member, even if they're a government agent, even if they never
25 joined the conspiracy, that the Court is in a position like that

1 to make a finding that the statements are a prong to the evidence
2 in furtherance of the conspiracy.

3 But here, with respect to what I believe Mr. Martin set
4 forth, given the fact that Dobropolski -- and I'll make sure I
5 pronounce his name correctly in front of the jury -- he is going
6 to say that, I was in a bad way here. My goal here was to coax
7 stuff out of these guys. Okay?

8 And so with respect to whether or not the Court's going
9 to make the finding by a preponderance that a particular
10 statement is in furtherance of the conspiracy, the Court has more
11 than simply our argument, but a substantial proffer that the
12 context of how these statements were made.

13 It isn't like somebody recruiting somebody clearly.
14 It's this bizarre give and take where the person's going to say,
15 My goal was to try to get these guys' confidence and to say
16 certain things. And how that comes out from the witness stand,
17 it is our position, and I suspect it's the codefendants'
18 positions as well, is going to color the Court's determination as
19 to whether or not the Court is convinced by a preponderance that
20 a statement was in furtherance of the conspiracy or was, suggest,
21 I call it idle chatter, but that sort of minimizes what's going
22 on. But not every statement of culpability is a statement in
23 furtherance of the conspiracy.

24 And I believe that we have established that there's
25 enough --

1 THE COURT: But I don't need to, I don't need a
2 hearing. Mr. Harding shook his head when you described just now
3 what you believe Mr. Dobropolski's testimony is.

4 MR. KURLAND: Shake it up and down or sideways?

5 THE COURT: Sideways. All right? So even accepting
6 that at face value, I don't need a hearing in order to make a
7 determination whether, even assuming Dobropolski wanted to induce
8 statements in furtherance of the conspiracy, whether by a
9 preponderance of the evidence those statements are still in
10 furtherance of the conspiracy.

11 Again, if I can be clear, I understand the dichotomy
12 that the defense wants me to adopt. The defense wants me to
13 adopt a dichotomy that says a statement is either voluntary in
14 the constitutional sense, number one, and is, number two, not
15 idle chatter, or the defense theory seems to be they're
16 statements in furtherance of the conspiracy. And I just don't
17 buy that. And I don't need an evidentiary hearing to tell you
18 that. I don't buy that.

19 If Dobropolski intended to induce incriminating
20 statements, I would be prepared to say, So what? If Dobropolski
21 intended to generate trust in him by the declarants, I would be
22 prepared to say, So what? The question is, given the
23 non-evidentiary record from the defense perspective, why would
24 Mitchell and/or Harris simply brag to Dobropolski or anybody else
25 about a murder they had committed?

1 MR. KURLAND: Judge, we have heard some bizarre
2 evidence as to what these defendants purportedly say to one
3 another, to people on visits, and to other prisoners, that might
4 seem somewhat incredulous or illogical. But if we had a
5 situation here, where, let's say there is a defendant allegedly
6 is making a statement to another prisoner who's a quadriplegic,
7 okay, instead of being some big strapping guy who apparently was
8 allegedly possibly being recruited to provide muscle. All right?
9 There are cases in which defendants, prisoners --

10 THE COURT: You change the facts, you change the
11 analysis.

12 MR. KURLAND: No, I understand that, Your Honor. But
13 even if a defendant or somebody in prison bragged or confessed
14 about a crime they allegedly committed to somebody who, say, was
15 physically infirmed and could not under any stretch of the
16 imagination be helpful, I don't think in that situation the Court
17 would have, would be, I don't think the Court would have
18 difficulty in saying that is just idle chatter, that is not a
19 statement in furtherance.

20 THE COURT: But that's not this case.

21 MR. KURLAND: I understand that's not this case, Your
22 Honor. But the fact is it proves the proposition that not every
23 statement made that is inculpatory to somebody else is in
24 furtherance of the conspiracy.

25 THE COURT: And you don't have to convince me of that.

1 You're absolutely right.

2 MR. KURLAND: So therefore, here, and if the Court
3 feels on the proffer such as it is, then that, I guess, is going
4 to be the Court's finding of preponderance. But again, if the
5 testimony comes out a little bit different, if we don't have a
6 hearing, it's going to lead to heightened mistrial motions. And
7 I think that's just, you know, if the Court's, if the Court is
8 satisfied on the record --

9 THE COURT: I haven't heard from Mr. Harding yet but I
10 think I'm satisfied.

11 MR. KURLAND: Okay. Hopefully, it will be a weaker
12 position after Mr. Harding speaks.

13 THE COURT: All right. Thank you, Mr. Kurland.

14 MR. LAWLOR: Judge, could I get a word before Mr.
15 Harding goes?

16 THE COURT: No. I think I've given the defense a full
17 opportunity. Mr. Harding.

18 MR. HARDING: Judge, just to put things in perspective.
19 Over 99% of the statements that Dobropolski is going to report
20 about are going to come in as admissions because --

21 THE COURT: Well, they're going to come in against
22 admission, they're going to come in as admissions against the
23 declarant.

24 MR. HARDING: Yes.

25 THE COURT: That's understood. So that's why I asked

1 Mr. Martin, why isn't Mr. Kurland up here, why isn't Mr. Crowe up
2 here? So I appreciate that. I'm really focused on, really,
3 Gardner and Martin more than Harris and Mitchell, although I
4 appreciate Mr. Martin, Esquire, taking the lead on this issue.

5 MR. HARDING: Okay. Well, did the Court get the
6 pleading that I filed?

7 THE COURT: I did.

8 MR. HARDING: Okay. I want to briefly address Mr.
9 Martin's statements about being surprised by all this and not
10 having notice about it until recently.

11 The statements that we're talking about --

12 THE COURT: Could you tell us precisely, as precisely
13 as you can, what the statements are and when they were made?

14 MR. HARDING: Yes.

15 THE COURT: And by whom.

16 MR. HARDING: In April of '02, Mr. Dobropolski was
17 locked up with Shelton Harris, who was his cell mate, and also
18 Mr. Mitchell, who was not his cell mate, but nevertheless talked
19 to both Mr. Harris and Mr. Dobropolski during this time period.

20 THE COURT: This is at Central Booking?

21 MR. HARDING: Yes. The statements were not at all
22 extracted by Mr. Dobropolski. Mr. Harris had already heard of
23 Dobropolski. Mr. Dobropolski had a reputation. He was a tough
24 guy from the streets of Park Heights. And Mr. Harris immediately
25 took an interest in recruiting this guy.

1 So in the course of conversation --

2 THE COURT: And by the way, how do you know, what is
3 the source of your information that Mr. Harris took an immediate
4 interest in recruiting Dobropolski?

5 MR. HARDING: It's Mr. Dobropolski.

6 THE COURT: Okay. And I assume he's not going to use
7 that particular language.

8 MR. HARDING: No.

9 THE COURT: As best as you can tell me, what is
10 Dobropolski going to say? How does he say, Yeah, Harris tried to
11 recruit me?

12 MR. HARDING: He's going to say that they talked first
13 about some of their mutual friends from Park Heights, some guys
14 they knew in common and stuff they'd done in the past. They got
15 to know one another.

16 Mr. Harris had heard about Mr. Dobropolski from other
17 prisoners before they became cell mates. And so --

18 THE COURT: You mean, again, I don't want to put words
19 in anybody's mouth, but I'm just trying to understand the factual
20 basis because, as counsel say, I have to make a finding by a
21 preponderance.

22 Are you saying that Dobropolski shows up at Central
23 Booking when Harris is already there, and before Dobropolski is
24 assigned as Mr. Harris's cell mate other detainees are talking
25 about the fact, hey, guess who's here?

1 MR. HARDING: Yes.

2 THE COURT: Dobropolski? Is that what you mean when
3 you say Harris found out about --

4 MR. HARDING: Yes.

5 THE COURT: -- Dobropolski before Dobropolski became
6 Harris's cell mate?

7 MR. HARDING: Yes.

8 THE COURT: Okay. So Dobropolski is sort of a guy with
9 a reputation?

10 MR. HARDING: Yes.

11 THE COURT: And some street cred?

12 MR. HARDING: Yes.

13 THE COURT: And in Park Heights?

14 MR. HARDING: Yes. And they knew a number of people in
15 common, whom Mr. Dobropolski will name.

16 THE COURT: All right. Now, let me, you know, I
17 alluded to this the other day. And the record needs to reflect.
18 I think it's even a matter of judicial notice. But basically, in
19 the context of Baltimore City, when people talk about Park
20 Heights, certainly in the last 15 to 20 years, people are talking
21 about an African-American community. Fine people who bought
22 their homes and take care of their homes and are beleaguered by
23 the criminal activity, including the drug dealing, that goes on
24 in Park Heights. I mean, really, everybody knows that.

25 It is a place where many federal dollars have been

1 devoted to try to increase the housing stock, to improve the
2 housing stock, improve the streets, improve the safety of the
3 community.

4 And so what hasn't been said yet on the record and what
5 we need to, I think, make a part of this is I'm told that
6 Dobropolski is Caucasian. Is that right?

7 MR. HARDING: Yes, he is.

8 THE COURT: So is that part of his reputation? I mean,
9 if you know.

10 MR. HARDING: I'm not sure, Your Honor. I never
11 discussed that particular aspect of it with him.

12 THE COURT: All right. Again, I'm talking from serving
13 21 years as a judge in Baltimore City, state and federal, having
14 heard more drug, assault, murder, traffic cases coming out of
15 what is commonly understood to be Park Heights during all that
16 time. And most people, most judges would be surprised to know
17 that there were Caucasian drug dealers in Park Heights. Okay.

18 MR. HARDING: Yes, Your Honor.

19 THE COURT: But to your knowledge, that's not a part of
20 Dobropolski's milieu or his environment, his reputation?

21 MR. HARDING: Well, I see why the Court is speculating
22 about that. But I'm afraid I just don't have any information on
23 that.

24 THE COURT: That's fine. That's fine. I'm trying to
25 understand why, when Dobropolski shows up at Central Booking, he

1 would be a topic of conversation among the detained population
2 there. Do you know anything else about that? I mean, there are,
3 what? I don't know. 275 people a day go into Central Booking
4 during the 2002/2004 period. Why would people be particularly
5 interested in him? Or knowledgeable about him?

6 MR. HARDING: I don't know, Your Honor.

7 THE COURT: Okay. That's fine. Go ahead.

8 MR. HARDING: Well, Mr. Harris, the way this will come
9 out and the way it's always come out to me is that Mr. Harris
10 volunteered the whole story of this double homicide in Rahman's
11 car. It wasn't anything that Mr. Dobropolski extracted. Even,
12 the Court has already made it clear that it doesn't really matter
13 whether Dobropolski was trying to extract it or not. But, in
14 fact, he was not.

15 In fact, it was not until May of 2003 that Dobropolski
16 bothered to write the state court judge about all this. It was
17 eight or nine months later, after these August of '02 statements.

18 THE COURT: So the statements are in August, '02?

19 MR. HARDING: Yes.

20 THE COURT: So when did they become cell mates, Mr.
21 Harris and Mr. Dobropolski?

22 MR. HARDING: In August of '02. Remember, Mr. Harris
23 was locked up from June of '02 for that drug raid on his mother's
24 house and also on an assault charge. I'm not sure exactly when
25 Dobropolski was locked up.

1 THE COURT: Okay. So the April date is not correct?

2 MR. HARDING: April?

3 MR. MARTIN: He was wrong, Your Honor. He got it
4 wrong. It's late August, early September.

5 THE COURT: Somebody earlier said that --

6 MR. MARTIN: You did when you were talking to the
7 judge.

8 THE COURT: You said April, '02?

9 MR. HARDING: I meant to say August. The statements
10 are in August of '02.

11 THE COURT: All right. The statements are in August,
12 '02. Okay. Mr. Harris having been arrested in June of '02.

13 MR. HARDING: That's right.

14 THE COURT: And Mr. Dobropolski having been arrested
15 and having become his cell mate at some point after that.

16 MR. HARDING: Yes.

17 THE COURT: Because Mr. Harris was already there.

18 MR. HARDING: Well, actually, I'm not sure when
19 Dobropolski arrived there. But they didn't have contact really
20 until they became cell mates. They may have both been in CBIF
21 for a while.

22 THE COURT: Okay. And Mr. Mitchell had been there
23 since late April?

24 MR. HARDING: Around April 1st.

25 THE COURT: Early April. All right. All right. So

1 your proffer is that Mr. Dobropolski, whatever he said in the
2 grand jury or whatever may appear in the DEA, he's going to deny
3 having elicited or --

4 MR. HARDING: Yes.

5 THE COURT: -- induced.

6 MR. HARDING: That's right. He did report it to a
7 judge in May of '03, but that's many months later. And so that
8 tends to suggest that when he was having these discussions with
9 Shelton Harris and Mitchell, he wasn't just trying to extract
10 information from them that he could exploit to his advantage. He
11 was, in fact, involved in serious negotiations with them about
12 participating in their criminal activities. That's my
13 understanding.

14 THE COURT: During the August and post August period,
15 you mean?

16 MR. HARDING: Yes.

17 THE COURT: All right.

18 MR. HARDING: Now, just to go back to the surprise
19 issue, if I may, Your Honor. Mr. Martin acknowledges that he got
20 the grand jury testimony back when the Court, several years ago,
21 maybe two years or more ago, the Court ordered Mr. Coburn to turn
22 over all the Jencks material.

23 THE COURT: Right.

24 MR. HARDING: The grand jury is, as far as I know, the
25 only statement that I have, the only presentation of these

1 statements. There is no DEA-6 that I'm aware of on this issue.
2 So, in fact, Mr. Martin and other counsel have had all this
3 information not simply for months, but for years. And so to say
4 now that they're being surprised by this strikes me as very
5 farfetched.

6 The statements that were turned over late, because I
7 didn't know about them, were these statements in '03 that
8 Dobropolski made when he was out on the street with Harris. They
9 had a series of conversations that wound up being in some cases
10 tape recorded, although poorly.

11 None of that stuff involves coconspirator statements
12 that I have to try to get in. They are arguably coconspirators
13 statements, but they're also admissions. The stuff will all come
14 in as admissions.

15 THE COURT: Against Mr. Harris only?

16 MR. HARDING: Yeah. He didn't have any conversations
17 with Mr. Mitchell in that period.

18 THE COURT: All right. What's the character of those
19 statements?

20 MR. HARDING: Well, they're talking about new crimes
21 that they are going to be involved in. And there's also one
22 conversation about the murder in Rahman's car because Mr.
23 Dobropolski did try to extract information from Harris about that
24 murder.

25 THE COURT: And what's that statement, if you recall?

1 The gist of it.

2 MR. HARDING: Yes. Mr. Dobropolski will testify that
3 in December of '03 he asked Shelton Harris if the guy he killed
4 in Rahman's car was named Woody and Rahman responds, he shakes
5 his head.

6 THE COURT: Harris responds.

7 MR. HARDING: Yes. Sorry. Harris responds yes. Mr.
8 Dobropolski then, in an attempt to elicit more information, he is
9 trying to elicit information at this point.

10 THE COURT: Right.

11 MR. HARDING: Says that he was locked up with some guy
12 who was trying to take credit for that homicide.

13 THE COURT: He says this to Harris.

14 MR. HARDING: Yes. And Harris responds, He's trying to
15 take credit for my, my murder.

16 THE COURT: I see. All right.

17 MR. HARDING: He's sort of indignant about the whole
18 thing.

19 THE COURT: All right.

20 MR. HARDING: And then there's a little bit more
21 discussion, and that's basically the end of it. In fact, some of
22 that discussion comes across on the tape. And so I'm actually
23 going to play, when Mr. Dobropolski testifies, just a few minutes
24 of the tape of that, because you can hear Mr. Harris say, He's
25 trying to take credit for my shit, words to that effect.

1 THE COURT: All right. Okay. Is this account included
2 in those narratives that Dobropolski prepared after the --

3 MR. HARDING: Yes.

4 THE COURT: -- encounters?

5 MR. HARDING: Yes.

6 THE COURT: And you turned those over some weeks ago?

7 MR. HARDING: Well, the reports were turned over a
8 couple of week ago before trial, I believe. Some of them were
9 turned over during trial. Some of them were turned over before
10 trial. And the handwritten statement, I didn't know about until
11 last week, and we turned it over then.

12 THE COURT: All right.

13 MR. HARDING: Okay. I might add that Mr. Martin made
14 some statements to suggest that Mr. Dobropolski isn't really sure
15 about all this, that there's some aura of uncertainty about these
16 statements. In fact, quite the opposite is true. He's very
17 definite and clear and he provides specific details that add
18 credibility to this whole account because nobody could have known
19 about this except Shelton Harris.

20 Dobropolski knows, for example, that when Shelton
21 Harris committed the crime, he then got out of the car and the
22 car proceeded to roll down the hill, because Harris tells him
23 this. I submit, Your Honor, that the only other person in
24 Baltimore who could have known that's the way the murder happened
25 was the guy, the technician who came in here and testified about

1 the GPS results on McCaffity's car. The car stopped for a few
2 minutes and then rolled down the hill and crashed into the tree.

3 THE COURT: All right.

4 MR. HARDING: This is something that Dobropolski knew
5 about. He knew where the victims were shot. He knew there was a
6 man and a woman. He knew the man was shot first. He knew the
7 woman was shot only because she happened to be there. He knew
8 that the whole thing arose over a dispute about some rap music
9 incident that Mr. Mitchell got involved in.

10 THE COURT: All right. Who does he say was present?

11 MR. HARDING: At the murder?

12 THE COURT: Yes.

13 MR. HARDING: He only talks about Mr. Harris's role
14 because that's what Harris talks about.

15 THE COURT: All right.

16 MR. HARDING: But he, Mr. Harris tells Dobropolski that
17 Mitchell is the guy who had him do this.

18 THE COURT: And Mitchell --

19 MR. HARDING: Mitchell acknowledges that later on in
20 this fashion that they use of saying, He put in work for me.

21 THE COURT: And when did that conversation take place?

22 MR. HARDING: It was also in this August, 2002 time
23 period, when they were all locked up together.

24 THE COURT: All right.

25 MR. HARDING: Mr. Dobropolski had some separate

1 conversations with Mitchell.

2 THE COURT: All right.

3 MR. HARDING: If I may, Your Honor, in my pleading that
4 Your Honor has read, I pointed out the very narrow reading that
5 the Fourth Circuit has given to this idle chatter issue. In
6 fact, the Howard case and the Lewis case show that the Court does
7 not want the idle chatter kind of argument to prevent evidence
8 from coming in. They have a very narrow interpretation of that.

9 This case here, the case of Mr. Dobropolski, is clearly
10 one where Mr. Harris and Mr. Mitchell, too, are both interested
11 in impressing Dobropolski because they want him to join up with
12 their crew. And that is clearly a coconspirator situation.

13 It wouldn't even matter under Shores if Dobropolski
14 never became a member of the conspiracy. Even if he said no to
15 them, under Shores, statements made by a coconspirator to a third
16 party who is not then a member of the conspiracy are considered
17 to be in furtherance of the conspiracy if they are designed to
18 induce that party to either join the conspiracy or to act in a
19 way that will assist in accomplishing its objectives.

20 So in fact, Mr. Dobropolski did agree to become a
21 member of the conspiracy. That was the upshot of their
22 discussions while they were in jail.

23 THE COURT: And what is your basis for saying that?

24 MR. HARDING: Several things, Your Honor. First of
25 all --

1 THE COURT: I really only need one.

2 MR. HARDING: Well, Dobropolski is going to testify
3 that he agreed to join their crew.

4 THE COURT: All right. Okay.

5 MR. HARDING: Another is that Mr. Harris wrote rap
6 songs about Mr. Dobropolski. Wrote some lines in rap songs about
7 him.

8 THE COURT: He write lines about Dobropolski?

9 MR. HARDING: Yes.

10 THE COURT: What lines? I mean, what did he have to
11 say about Dobropolski? You don't have to quote it.

12 MR. HARDING: For cracking backs or something like
13 that.

14 THE COURT: Cracking backs?

15 MR. HARDING: Yes.

16 THE COURT: What does that mean?

17 MR. HARDING: He was praising his ability to inflict
18 physical violence on his fellow man.

19 THE COURT: And how do you know it's about Dobropolski?

20 MR. HARDING: He uses the name "Chris" and Dobropolski
21 says --

22 THE COURT: Is that Dobropolski's first name?

23 MR. HARDING: Yes. And Dobropolski remembers him
24 writing the rap and singing it when they were locked up together.
25 The rap was recovered from Dobropolski's house in 2004, along

1 with all the other rap lyrics that he had written.

2 THE COURT: You mean Harris's house.

3 MR. HARDING: Harris's house, yes.

4 THE COURT: Are you suggesting that the lyrics were
5 actually written in Central Booking?

6 MR. HARDING: Yes.

7 THE COURT: Okay. All right.

8 MR. HARDING: Because Dobropolski remembers him writing
9 this stuff.

10 THE COURT: Okay. And singing it, you say?

11 MR. HARDING: Yes.

12 THE COURT: In Central Booking?

13 MR. HARDING: Yes.

14 THE COURT: Sort of rehearsing?

15 MR. HARDING: Yes.

16 THE COURT: All right.

17 MR. HARDING: And there are little slips of paper with
18 Dobropolski's name and phone numbers all over it.

19 THE COURT: In Harris's stuff?

20 MR. HARDING: In Harris's stuff, yes.

21 THE COURT: All right.

22 MR. HARDING: Also, of course, they meet up in 2003 and
23 engage in a number of meetings and phone conversations where
24 they're planning new criminal activity. It's clearly no --

25 THE COURT: Which is evidence of Dobropolski's

1 agreement to be involved?

2 MR. HARDING: Yes.

3 THE COURT: Although by then he's actually working for
4 the government?

5 MR. HARDING: Yes.

6 THE COURT: All right.

7 MR. HARDING: Harris, remember, was not in 2002 locked
8 up for murder. He was just doing what he thought was a short bit
9 of time for this drug charge he picked up.

10 THE COURT: The drugs from Amity Street.

11 MR. HARDING: Yes. In fact, he got out in 2003. Okay.
12 I think those are the only points that I need to emphasize.
13 Thank you, Your Honor.

14 THE COURT: All right. I've looked at yours -- I'm not
15 going to hear any more argument on this.

16 MR. KURLAND: Can I just preserve our severance motion
17 on this?

18 THE COURT: Of course. Everybody preserves a severance
19 motion.

20 MR. LAWLOR: Your Honor, can I say something?

21 THE COURT: No, Mr. Lawlor. I'm ready to rule.

22 MR. LAWLOR: Judge --

23 THE COURT: Mr. Lawlor, I said no. I don't see a need
24 for an evidentiary hearing. The Court is entitled, certainly in
25 the absence of any factual proffer calling for express

1 fact-finding from the defense, the Court is entitled to accept
2 the government's proffer, obviously assures itself, makes clear,
3 and as the rules make clear, the strict rules of evidence don't
4 apply to the Court's preliminary determination.

5 And the Court has no hesitation in finding
6 preliminarily, by a preponderance, that these various statements
7 by Mr. Harris primarily, and by Mr. Mitchell, to Mr. Dobropolski
8 in the late summer, early fall, whatever it was, of 2002 were
9 prima facie and by a preponderance of the evidence made in
10 furtherance of the conspiracy.

11 The government has refuted, through its proffer,
12 suggestions from the defense that statements were purposely
13 induced. The Court finds no indicia of idle chatter based on the
14 proffer of evidence before the Court.

15 The Court finds that, indeed, based on the government's
16 proffer, that Dobropolski was a recruit, was intended to be,
17 talked to as a potential recruit, and according to the
18 government's representation, actually agreed to join in certain
19 activities with one or more of the defendants. And again, the
20 Court is entitled to take Mr. Dobropolski's testimony, and thus
21 his proffered testimony, into account in ruling on this issue.

22 With respect to the purported Bruton issue regarding
23 Mr. Mitchell and Mr. Harris's assertion that it was Mr. Mitchell
24 who put him up to the McCafferty/Brown murders, the proffer is
25 that Mr. Mitchell ratified that statement. And so in that sense

1 Mr. Harris's assertion that Mr. Mitchell put him up to it is
2 actually cumulative and is not unduly prejudicial.

3 In fact, I don't believe there is a Bruton problem
4 where Defendant A effectively confesses and Defendant B's
5 confession includes incriminating statements about Defendant A,
6 at least when all we're talking about is a single murder or, as
7 here, a double murder.

8 So for all these reasons, the Court will not conduct an
9 evidentiary hearing and finds preliminarily that Mr.
10 Dobropolski's proposed testimony is admissible against all the
11 defendants. The defendants' exceptions and objections are noted
12 for the record.

13 Of course, the Court reserves the prerogative to modify
14 this ruling as such needs may arise. And of course the Court
15 will instruct the jury carefully with respect to admission of
16 coconspirators statements at the appropriate time.

17 Are there any other issues before we bring the jury
18 out?

19 MR. HARDING: Not from the government.

20 MR. MARTIN: I'm not taking exception to your ruling.

21 THE COURT: Well, you have the exception.

22 MR. MARTIN: Right.

23 THE COURT: Your record is made and preserved.

24 MR. MARTIN: Just something you said that I want to
25 point out and make sure the record shows it, because I'm not sure

1 whether it's been filed. Our response to the motion in limine
2 contains at least four very specific statements Dobropolski made
3 which read as idle chatter. I don't know whether the Court is
4 aware of that. But you've ruled. But it's there and I wanted to
5 make sure the record shows that. Those are the reasons why we
6 think the court should grant our motion.

7 THE COURT: I just don't believe you can make a
8 determination from a statement on a piece of paper whether it's
9 idle chatter.

10 MR. MARTIN: But you're making determination that it
11 isn't from a statement on a paper.

12 THE COURT: The statements that I've heard. I asked
13 you this morning, what statements are we talking about?

14 MR. MARTIN: They were in my motion, Your Honor. Four
15 or five they have.

16 THE COURT: I'm asking you now, what statements? If I
17 haven't heard all the statements --

18 MR. MARTIN: I think he sort of wanted me to do
19 something with him. After several weeks he opened up to me.

20 THE COURT: Well, that's not a statement. No. I think
21 he sort of wanted me to do something is not a statement by
22 anybody. Look, we're past this issue. I'm finished. Is there
23 anything else, Mr. Kurland?

24 MR. KURLAND: Your Honor, I just wanted a
25 clarification. The last thing that Mr. Harding said concerning

1 something on the tape about somebody taking credit for the --

2 THE COURT: Right.

3 MR. KURLAND: It's my --

4 THE COURT: That's admissible only against Mr. Harris.

5 MR. KURLAND: Okay. It's on that ground we ask for
6 severance and at a minimum that the Court give a specific
7 limiting instruction.

8 THE COURT: Of course I will. Of course I will. All
9 right. Let's bring the jury out, please. Can we have Mr.
10 Dobropolski brought down?

11 MR. LAWLOR: Judge, real quick. Your Honor, just on
12 this issue procedurally. Mr. Martin is going to take the lead
13 and then we were going to go second.

14 THE COURT: Yeah. That was agreed last week. Mr.
15 Dobropolski, when the jury is seated you'll be asked to stand and
16 the clerk will place you under oath. She'll also offer you
17 water.

18 (Jury enters the courtroom.)

19 THE COURT: Please be seated, ladies and gentlemen. A
20 belated good morning to each of you. We trust you had a pleasant
21 weekend. I again apologize and regret the delay that was
22 occasioned this morning. We're ready to continue.

23 You will recall, of course, that when we broke on
24 Wednesday last week, there was a witness on the stand whose
25 testimony had not been completed. But as I told you earlier

1 during the trial, there will be occasions when we will interrupt
2 a particular witness' testimony so as to better manage the trial
3 and the appearance of certain witnesses. So we're going to do
4 that this morning.

5 The witness who was on the stand last Wednesday, of
6 course, will be back, I think probably later this week, to
7 complete his testimony. I think you will be able to follow
8 along.

9 The government may call its next witness.

10 MR. HARDING: Yes, Your Honor. The United States calls
11 Christopher Dobropolski. Mr. Dobropolski, would you stand and
12 face the clerk, please, and be sworn?

13 CHRISTOPHER DOBROPOLSKI, GOVERNMENT'S WITNESS, SWORN.

14 THE CLERK: Speak directly toward the mike and state
15 your name and spell it for the record.

16 THE WITNESS: Christopher Dobropolski.

17 THE COURT: Spell that, please.

18 THE WITNESS: D-O-B-R-O-P-O-L-S-K-I.

19 DIRECT EXAMINATION

20 BY MR. HARDING:

21 Q Good morning, Mr. Dobropolski.

22 A Good morning.

23 Q Can you tell us how old you are, sir?

24 A 37.

25 Q Okay. Where did you grow up?

1 A Northwest Baltimore.

2 Q How far did you get in school?

3 A GED.

4 Q Okay. Have you ever been convicted of any crimes, Mr.
5 Dobropolski?

6 A Yes, I have.

7 Q Can you tell us what crimes you've been convicted of?

8 A Auto thefts, assaults, batteries, domestic violence.

9 Q Okay. Several, several different crimes. Did you say
10 assaults in the plural or singular?

11 A Plural.

12 Q How many assault convictions do you have, if you remember?

13 A I don't know. A handful.

14 Q Are these including domestic assault type crimes?

15 A Yeah.

16 Q Okay. Are they all domestic assault type?

17 A No.

18 Q No? Okay. What about resisting arrest? Were you ever
19 convicted of resisting arrest?

20 A Sure.

21 Q Can you tell us what time period you acquired these
22 convictions? Beginning when and ending when? Does it go back to
23 the 1990's?

24 A It goes back to the '80s.

25 Q To the '80s. How old are you now again, did you say?

1 A 37.

2 Q Okay. Can I focus your attention on the period 2001, 2002?
3 Can you tell us how you were earning a living back at that time?

4 A 2001, 2002? I was in a rehabilitation center in 2001.
5 2002, I was released. Selling drugs.

6 Q Okay.

7 A Construction.

8 Q And shuffling?

9 A Construction. I was doing construction work, too.

10 Q Where were you selling drugs?

11 A South Baltimore.

12 Q And you said you were in a rehab program, is that right?

13 A Yeah. Right before that, yeah.

14 Q What, is that a drug rehab program you're talking about?

15 A Second Genesis.

16 Q Second Genesis?

17 A That's right.

18 Q So you in the past have been addicted to drugs?

19 A Sure.

20 Q Okay. Have you used drugs recently?

21 A No.

22 Q In fact, you've been locked up for a while, is that correct?

23 A 17 months.

24 Q Okay. What are you locked up for right now?

25 A The remainder of an eight year sentence, violation of

1 parole.

2 Q I see.

3 A Domestic violence.

4 Q Okay. You got paroled in a domestic violence case?

5 A Um-hum.

6 Q And you violated that and you got sent back to do the rest
7 of your sentence?

8 A Yeah.

9 Q Okay. How did you violate it?

10 A Picked up an auto theft charge. Was arrested for an auto
11 theft. Pled guilty to an auto theft charge.

12 Q So that's your auto theft conviction, then, is that correct?
13 Because you said before you got convicted of an auto theft, I
14 believe.

15 A Yeah. But I had auto thefts back in the early, I mean the
16 late '80s.

17 Q How many auto theft convictions do you have?

18 A Probably three, four.

19 Q Okay. Let me call your attention to August of 2002. Did
20 you get locked up at that time?

21 A Yes, I did.

22 Q And what were you locked up for then?

23 A Assault, and also violation of court order.

24 Q Okay. How long did you remain locked up for then?

25 A Probably 14, 15 months.

1 Q Okay. Were you housed at Central Booking here in Baltimore
2 at the beginning of that time period, beginning August of 2002?

3 A Yes, I was.

4 Q Okay. Who was your cell mate when you were there?

5 A Shelton Harris.

6 Q How long was he your cell mate for?

7 A Probably about two weeks.

8 Q Do you see him here in the courtroom today?

9 A Yep.

10 Q Can you point him out to us, please?

11 A (Indicating.)

12 Q What kind of clothing is he wearing?

13 A Mr. Harris is wearing, it looks similar, Mr. Harris is
14 wearing a black shirt, I think. It's the bald head. Oh, the
15 striped shirt. I'm saying they look similar because they both
16 have bald heads. I haven't seen him in like five or six years.

17 Q Okay. What kind of shirt do you think Mr. Harris is
18 wearing?

19 A The one in the white striped shirt.

20 Q Okay. May the record reflect that the witness has
21 identified Shelton Harris, Your Honor?

22 THE COURT: So noted.

23 Q When you met him, did he already know who, know about you?

24 A Sure. There were people on the tier talking about me.

25 Q What was your reputation?

1 MR. MARTIN: Objection.

2 THE COURT: Overruled. You may answer.

3 Q You may answer.

4 A Oh. For being an enforcer.

5 Q Being an enforcer. What does that mean?

6 A Collecting money for other drug dealers.

7 Q Okay. So did Mr. Harris speak to you and talk to you about
8 your reputation?

9 MR. MARTIN: Objection, Your Honor, leading.

10 THE COURT: Overruled. You may answer.

11 A Did he speak with me about that?

12 Q Yes.

13 A Sure.

14 Q Can you tell us what kind of conversations you had with Mr.
15 Harris when he became your cell mate?

16 A Just talking about some of the work that I did in the past
17 as far as collecting money, muscling people. Doing things of
18 that nature, things he was interested in.

19 Q Did, did you talk about anybody that you knew in common?

20 A Sure. Julius Collins, Cookie Man Lexus, Lex Stove, Stover
21 Stockman.

22 Q Okay. You mentioned Julius Collins. Who is that?

23 A Jules. I kind of grew up with Jules.

24 Q Jules Collins?

25 A Yeah. Julius is his name.

1 Q Is he a drug trafficker?

2 A Yeah. He's got a reputation of being a serious individual.

3 Q What does "serious" mean exactly?

4 A He can get you touched. Jules, he can handle his business.
5 He can fight. If he wants to shoot you, he'll shoot you, do
6 whatever. Jules is a serious individual.

7 Q What about Stover Stockton? You mentioned him.

8 A Yeah. They're just names I was familiar with from being
9 around the area.

10 Q Being around what area are you talking about?

11 A Park Heights.

12 Q Okay. And you mentioned someone named Lex?

13 A Yeah.

14 Q Would you say all these guys are serious individuals?

15 A Yeah.

16 Q Did you mention a guy named Cookie Man?

17 A Yep.

18 Q Is he another serious individual?

19 A Yes, he is.

20 Q And were these all guys that you and Mr. Harris knew in
21 common?

22 A Sure.

23 Q At that time, did Mr. Harris expect to be locked up for a
24 long time or not?

25 A I don't know but he had a pending case. But he wasn't sure.

1 Q He wasn't sure?

2 A Yeah. He didn't think it would be that long.

3 Q Sorry. Could you repeat that?

4 A He didn't think it would be too long.

5 THE COURT: Would you want some water, Mr. Dobropolski?

6 THE WITNESS: No, I'm fine.

7 BY MR. HARDING:

8 Q Do you remember what he was locked up for at that time?

9 A I think attempted murder, first degree assault, deadly
10 weapon.

11 Q Okay.

12 A And I think he had a pending drug charge.

13 Q Okay. Let me ask you about the assault. Do you remember
14 anything unusual about that assault charge that -- did he tell
15 you anything about it?

16 A Yeah. He said he stabbed somebody. In the process he lost
17 his finger, the knife closed on his finger.

18 Q Okay. So he cut his own finger off?

19 A Um-hum. Yes.

20 Q What about the drug charge? What did he tell you about the
21 drug charge?

22 A His mother's house got raided.

23 Q Okay. Did he, did he mention anything more about his
24 mother?

25 A She wasn't talking to him.

1 Q Did anything happen to her, did he tell you? Did she get
2 arrested?

3 A I think she might have.

4 Q Okay. Do you know, was she still living at that house that
5 got raided?

6 A I think she had to move. I'm not sure.

7 Q Okay. Did Mr. Harris recruit you to do anything?

8 A Did he recruit me?

9 Q Yeah.

10 A No, he didn't recruit me. He wanted to hook up when I got
11 out.

12 Q Okay. He wanted to hook up with you when you got out?

13 A Yeah.

14 Q To do what?

15 A Oh, rob drug dealers, sell drugs.

16 Q Rob drug dealers and sell drugs?

17 A Yep.

18 Q What drug?

19 A Crack. Whatever kind of drugs. Ecstasy.

20 Q Was Mr. Harris already dealing drugs at that time, before he
21 got locked up?

22 A I believe so, yes.

23 Q Whereabouts?

24 A In Park Heights, the Woodland area, Woodland Avenue area.

25 Q Woodland Avenue?

1 A Um-hum.

2 Q Is that what he told you?

3 A Yep.

4 Q Okay. So when you, the idea was that when you got out, you
5 and he would get together and rob drug dealers?

6 MR. KURLAND: Objection, leading.

7 THE COURT: Sustained. Rephrase the question.

8 BY MR. HARDING:

9 Q I just was recapitulating what you said. I'll move on to
10 something else. Did you agree to hook up with him when you got
11 out?

12 A Yes.

13 Q Did you engage in any discussions about music?

14 A Yeah.

15 Q What?

16 A His music. Sheistyville I think was the record label, or
17 was name of that crew, anyway.

18 Q Sheistyville?

19 A Um-hum.

20 Q Okay. Did he tell you anything more about his record label
21 or his crew, as you put it?

22 A Basically just gangsta rap, had his producer named Bo, had
23 his dude named LB, a couple other guys named Twin. Their kind of
24 rap.

25 Q And it did rap music, is that right?

1 A Yeah. Hip hop.

2 Q You said he had had a producer named Bo?

3 A Yeah.

4 Q Okay. And did Mr. Dobropolski sing in this rap group?

5 MR. MARTIN: Objection.

6 THE COURT: Sustained.

7 Q What was Mr. -- I'm sorry. What was Mr. Harris's role in
8 the group?

9 A He was a performer.

10 Q Okay. Did he also write rap music?

11 A Yes, he did.

12 Q Do you recall, did he mention you in one of his rap songs?

13 A Yes.

14 Q Okay. Your Honor, I have here an exhibit, which is marked
15 Government Exhibit SE-13. SE-13.

16 MR. MARTIN: Objection, Your Honor. There's no
17 foundation for this.

18 THE COURT: He's about to lay a foundation, I think.

19 MR. MARTIN: I don't think he can with this witness,
20 Your Honor.

21 THE COURT: Well, go ahead, Mr. Harding.

22 BY MR. HARDING:

23 Q You said that you were aware that he wrote, he mentioned you
24 in some rap lyrics, is that correct?

25 A Yes, he did.

1 Q Okay. Sorry we have a brief technical issue here, Your
2 Honor.

3 Did you ever see him writing rap lyrics, Mr.
4 Dobropolski?

5 A Yes.

6 Q Okay. I'm holding now under the screen what's been marked
7 as Government Exhibit SE-13?

8 THE COURT: I think you're going to need to take it out
9 of the envelope, Mr. Harding.

10 Q I'm not going to read this whole thing, but I'll just read
11 the last stanza down here. Know the downs back on Rock yeah we,
12 back to doing black on black crime, back in the streets busting
13 black on black nines with crack in those, these streets to the
14 friends, don't worry --

15 THE COURT: Just one moment. Apparently, the jurors'
16 monitors aren't --

17 MR. HANLON: We've got one working, Your Honor, but the
18 other two are not.

19 THE COURT: You think they maybe just need to be warmed
20 up? Looking for an unplugged cable?

21 MR. HANLON: Try moving this monitor over to the jury.

22 THE COURT: No. Let's get it fixed.

23 MR. HARDING: With the Court's permission I could
24 proceed and we could come back to this later.

25 THE COURT: That's a good idea. If you can proceed

1 without the exhibit.

2 BY MR. HARDING:

3 Q Oh, without the exhibit? Okay. Let me show you Government
4 Exhibit SE-20, Mr. Dobropolski.

5 THE COURT: Well, I was suggesting that if you had
6 additional questions that didn't require an exhibit while we're
7 waiting for IT to come. I'm sure it's just some unplugged cable
8 or something that can be fixed reasonably quickly. At least
9 that's my hope.

10 Q Did Shelton Harris tell you who he worked with on the
11 outside in robbing drug dealers and dealing drugs?

12 MR. MARTIN: Objection, Your Honor.

13 THE COURT: Overruled. You may answer.

14 A Bo, among other people. But essentially Bo.

15 Q Okay. Who is Bo?

16 A His producer.

17 Q His producer. Did you meet Bo?

18 A Sure.

19 Q How did you meet him?

20 A Through Shelton the first time. Second time I met him by
21 myself.

22 Q Okay. Was he at CBIF, also, Central Booking, also?

23 A Yes, he was.

24 Q Okay. And so Shelton Harris introduced you to Bo, is that
25 correct?

1 A Yes.

2 Q Did Mr., did this guy, Bo, also know of you before you met
3 him?

4 A I think through Shelton talking about me before to him.

5 MR. MARTIN: Objection, move to strike.

6 THE COURT: Overruled. Motion denied.

7 Q Do you see Bo here in the courtroom right now, today?

8 A Sure. Yeah.

9 Q Tell us what kind of clothing he's wearing.

10 A Gray shirt, white T-shirt underneath.

11 Q Okay. Can the record reflect that the witness has
12 identified Mr. Mitchell, Your Honor?

13 THE COURT: So noted.

14 Q Did you talk to him as well as to Shelton Harris about your
15 plans for when you got out of jail?

16 MR. MARTIN: Objection.

17 THE COURT: Overruled. You may answer.

18 A I spoke more to Shelton about that. But I mentioned it. It
19 was mentioned.

20 Q Okay.

21 A Brief conversations. Wasn't really --

22 Q In the course of your conversations, did Shelton Harris tell
23 you about a job that he had done?

24 A Yes.

25 MR. MARTIN: Objection.

1 THE COURT: Overruled.

2 Q Sorry. You should answer again, I guess.

3 A Yes.

4 Q Okay. What did he tell you?

5 MR. LAWLOR: Objection, Your Honor.

6 THE COURT: Overruled. You may answer.

7 A He told me, he asked me if I knew who Hasim Rahman was. And
8 I told him, yeah, of course I knew who he is. I was into boxing
9 a little bit. And he asked me if I remember after he won his
10 title, that a handful of his friends started getting killed. And
11 I wasn't aware of that because at the time I was in a
12 rehabilitation center and certain kinds of news and things like
13 that we didn't watch, like violence or, you know, it was kind of,
14 it was monitored a little bit.

15 THE COURT: Excuse me, Mr. Harding, one second.
16 Carlos, thank you for coming down. Apparently, these two
17 monitors seem to be unplugged or otherwise inoperative.

18 Thanks, Donna.

19 We just needed your presence. Thank you. All right.
20 Sorry, Mr. Harding.

21 BY MR. HARDING:

22 Q Sorry. Did they fix them?

23 THE COURT: They didn't fix them. They just stood next
24 to them.

25 Q Okay. Yes. They're working now. Is that correct, ladies

1 and gentlemen?

2 THE JURORS: Yes.

3 THE COURT: All right.

4 BY MR. HARDING:

5 Q Okay. Let's go back to these exhibits. If I can interrupt
6 you. We'll get back to what Mr. Harris told you in a few
7 minutes. Okay, Mr. Dobropolski?

8 A Yeah.

9 Q Just wanted to finish this rap lyric. Know the downs back
10 on track. Yeah, we back to doing black on black crime, back in
11 the streets bustin' black on black nines with crack in these
12 streets. To the friends, don't worry, the crack's fine. If
13 those who don't know, I cop all my weed sucks live or sacks live.
14 One love to my nigga Chris D. He crack spines. I'll go to war
15 for my nigga Ock. Hopefully he got five.

16 Can you read what it says there at the end? He got
17 five something?

18 A Who, me?

19 Q Yeah.

20 A I can't see it. Hopefully, he got five --

21 Q You can't understand it, either?

22 A No.

23 Q Okay. Who's Chris D?

24 A Me.

25 Q What does it mean to say that you crack spines?

1 A I fight, I enforce.

2 Q Okay. Let me show you some other slips of paper from
3 Government Exhibit SE-20.

4 Is that you, also, Mr. Dobropolski, Chris D?

5 A Yes, it is.

6 Q Did you write that yourself?

7 A Yes, I did.

8 Q Is that your handwriting?

9 A Yes, it is.

10 Q And what does Eric, what does that note mean?

11 A Eric's a friend of mine. He's in the hip hop business, too.

12 Q Okay. So why did you write that out for Mr. Harris?

13 A Because maybe they could do something in the studio
14 together.

15 Q I see. What does 30 milligrams mean?

16 A It's really 80 milligrams.

17 Q 80 milligrams.

18 A Yeah.

19 Q What does that mean?

20 A It's a hip hop group.

21 Q I see. So you were giving him a reference in the rap music
22 business?

23 A Yes, I was.

24 Q And down here?

25 A That's my address, my old address.

1 Q Did you write that one, also?

2 A Yes, I did.

3 Q And so Mr. Harris took it with him when he left CBIF, as far
4 as you know?

5 A Yep.

6 Q Let me show you another rap lyric here. This is SE-19.

7 I went hard to the point that I lost my fuckin' finger
8 and I don't mind losing another one day or my life. One love to
9 the heights for life. What does that refer to, Mr. Dobropolski?

10 A Losing his finger.

11 Q Okay. Now, you were telling us about a conversation that
12 you had with Mr. Harris where he started talking about Hasim
13 Rahman, the boxer?

14 A Um-hum.

15 Q And you explained that you didn't know about his friends
16 dying after he won the championship, is that right?

17 A That's right.

18 Q Okay. So go on and tell us what Mr. Harris told you.

19 A He told me a couple of the murders he committed, the ones
20 that were in his car. It was a dude, a dude named Woody and a
21 girl that he was with. He said that they'd been having problems
22 with Woody about money or maybe something with the industry, the
23 business they're involving themselves in. And supposedly Woody
24 was to give, was to get a gun from Bo but then turned around and
25 used it on Bo. So when he showed up to get the gun, Bo sent Mr.

1 Harris with the gun. Instead of giving it to him, killed him.
2 And when he got back to the car, he killed him and the female
3 that was in the car.

4 Q So he was doing what Bo told him to do?

5 A Yes, he was.

6 Q Where was Bo at this time, do you know?

7 A I'm not sure.

8 Q Okay. So what does this have to do with Mr. Rahman,
9 exactly?

10 A Absolutely nothing other than it was in his vehicle.

11 Q Okay. So let me see, let me back up. You said that this
12 thing grew out of some dispute over money, you say, or the rap
13 music business?

14 A Yeah. It was general description. It was nothing really
15 pinpointed. They were just having words.

16 Q And Mr. Harris told you that he committed the murder of the
17 two people in Rahman's car?

18 MS. RHODES: Objection, Your Honor.

19 MR. LAWLOR: Objection, leading.

20 THE COURT: Sustained.

21 BY MR. HARDING:

22 Q Okay. What did Mr. Harris say he did specifically in
23 connection with this?

24 MR. MARTIN: Objection. Asked and answered already.

25 THE COURT: Sustained. He's answered it.

1 BY MR. HARDING:

2 Q Okay. Did he tell you anything more about the manner in
3 which the two victims died?

4 A Yes, he did. He said he shot both of them in the head.

5 Q Did he tell you anything more about what happened to them
6 right after the shots hit their head?

7 A He said their heads went down very slowly, something that he
8 kind of, he kind of remembered because he just didn't think it
9 would happen like that. It's like mechanically, sort of.
10 Dropped down.

11 Q Did he tell you which one he shot first?

12 A The male.

13 Q And why was the -- you say there was a female there, too?

14 A That's right.

15 Q Did he tell you why he shot the female?

16 A Because she just happened to be there.

17 Q She just happened to be there?

18 A That's right.

19 Q Okay. Let me see. You said something about how the guy was
20 coming to get a gun from Bo, is that correct?

21 A That's right.

22 Q And so what did Bo tell Mr. Harris?

23 A He gave him the gun and he told him, when you get there --

24 MS. RHODES: Objection, Your Honor.

25 A -- kill him.

1 THE COURT: Overruled. Go ahead.

2 Q You can repeat it.

3 A He gave him the gun and told him, well, when you go to give
4 it to him, kill him.

5 Q Okay. Did he tell you what happened when he got out of the
6 car?

7 A Yeah. He said he got out of the car, was walking up the
8 street and looked back, the car was drifting down the street.

9 Q Okay. Did he say where he went at that time?

10 A Nah.

11 Q Okay.

12 A Not that I recall.

13 Q Did he mention to you any other shootings he'd been involved
14 in?

15 A Said one Woodland Avenue, he said he shot somebody. But I
16 really don't have any details about it.

17 Q Did you talk to Bo alone without Mr. Harris being present?

18 A Yes, I did.

19 Q Okay. Can you tell us, did you discuss with him your plans
20 for when you got out of jail at all?

21 A Yeah. Talking about doing, doing like stick-ups and stuff
22 like that. You know, Mr. Harris and I planned on doing. And you
23 know, explained to him that, you know, Shelton put me down, the
24 nature of some of the crimes he, you know, committed. Things
25 like that.

1 Q Okay. Did you mention this story that Mr. Harris had just
2 told you, had told you already about --

3 MR. LAWLOR: Objection Your Honor, leading.

4 THE COURT: Rephrase.

5 BY MR. HARDING:

6 Q Did you tell him anything about any of the crimes that Mr.
7 Harris had told you about?

8 MR. MARTIN: Objection.

9 MR. LAWLOR: Objection, Your Honor, leading.

10 THE COURT: Overruled. You may answer.

11 A Yeah. I explained to him that I knew about Rahman's car,
12 Woody, the girl getting killed, and stuff like that.

13 Q What did Mr. Mitchell say? I mean Bo. What did Bo say?

14 A He said he, he put work in, too.

15 Q What did you understand by that?

16 MR. LAWLOR: Objection.

17 THE COURT: Overruled. You may answer.

18 A He's killed people as well.

19 Q Okay. Did Mr., did this guy, Bo, talk to you about the
20 charge that he was locked up for at that time?

21 A Not, not details of the crime. He let me know he was
22 arrested for murder, he was being charged with murder and he had
23 a codefendant.

24 Q What did he say about it?

25 A He said that his codefendant ended up telling his girlfriend

1 that --

2 MR. CROWE: Objection, Your Honor.

3 THE COURT: You're quoting Mr. Mitchell now? Is that
4 it? You're telling the jury what Mr. Mitchell told you?

5 THE WITNESS: Sure.

6 THE COURT: About what his codefendant said?

7 THE WITNESS: Yeah.

8 THE COURT: Okay. Sustain the objection.

9 MR. HARDING: Actually, Your Honor --

10 THE COURT: You can do it. Go ahead. Rephrase the
11 question.

12 BY MR. HARDING:

13 Q I'm not interested in what the codefendant said to Mr.
14 Mitchell. I'm just asking you what Mr. Mitchell said about the
15 codefendant in connection with that charge.

16 MR. CROWE: Same objection, Your Honor.

17 MR. LAWLOR: Objection, Your Honor, likewise.

18 THE COURT: Overruled. You may answer.

19 THE WITNESS: All right. Mr. Mitchell explained to me
20 that supposedly his codefendant went and blabbed.

21 MR. LAWLOR: Objection.

22 THE COURT: Okay. Don't tell the jury what Mr.
23 Mitchell believed his codefendant had done. The question is,
24 what did Mr. Mitchell tell you about the codefendant?

25 THE WITNESS: He told me that his codefendant bragged

1 to his girlfriend --

2 MR. CROWE: Objection.

3 THE COURT: Can you get, jump over that part, Mr.
4 Harding, to get to the point?

5 MR. HARDING: Is the Court asking me to lead the
6 witness?

7 THE COURT: Well, if you can do so to get to the point.
8 Apparently, the answer to the question is the codefendant said
9 something to somebody. If that's what you're asking, the
10 objection is sustained.

11 MR. LAWLOR: Your Honor --

12 THE COURT: Go ahead, Mr. Harding.

13 MR. LAWLOR: We have a separate objection. Can we
14 approach?

15 THE COURT: The objection is sustained. Go ahead, Mr.
16 Harding.

17 MR. HARDING: Did Mr. Mitchell tell you who he thought
18 should take the charge?

19 MR. CROWE: Objection.

20 MR. LAWLOR: Objection.

21 THE COURT: Sustained. That means don't answer, Mr.
22 Dobropolski.

23 MR. HARDING: Can I ask the witness, Your Honor --

24 THE COURT: You can ask and I'll rule on any objection
25 that's made.

1 MR. HARDING: What did Mr. Mitchell say about his
2 codefendant who was charged in that offense?

3 MR. LAWLOR: Objection, Your Honor.

4 MR. CROWE: Objection.

5 THE COURT: Sustained. Let's move on.

6 BY MR. HARDING:

7 Q How long you were in Central Booking for, Mr. Dobropolski?

8 A Probably about 30 days.

9 Q When you left, did Shelton Harris or Bo go with you?

10 A No. Shelton was, he was in the part of the jail on a
11 different floor. I was in the JI building.

12 Q What's the JI building?

13 A The old part of City Jail. You have City Jail, JI, and you
14 have Central Booking.

15 Q Okay. So in other words, got split up from both Mr.
16 Mitchell and Mr. Harris, is that right?

17 A That's right.

18 Q Did you ever see them again until today?

19 A Yeah.

20 Q When?

21 A I saw Shelton the day I was going to DOC in '02. He was
22 coming back from court and I was going to Division of Corrections
23 backing my years. Actually, I had to go to Baltimore County. I
24 just beat my charges in Baltimore City. They were just
25 dismissed.

1 Q Okay. And so you ran into him in a bullpen or something
2 like that?

3 A He was coming back from court. He was on the other side.
4 He was in the hallway. I was in the bullpen area.

5 Q Did you speak?

6 A Yeah. I told him I'd be back in a few years.

7 Q Is that the last time you saw him?

8 A No. I saw him at Parole and Probation a couple times.

9 Q Okay. We'll get to that eventually. Did you ever see Mr.
10 Mitchell again?

11 A No. Not until today.

12 Q Okay. Did you subsequently report to anyone what you had
13 learned about these two murders in Rahman's car?

14 A Yes, I did.

15 Q How did you report it?

16 A I wrote a letter to my judge and asked him to pass
17 information to a homicide detective.

18 Q Okay. Let me show you what's been marked as Government
19 Exhibit MB-38. And if you can, Mr. Dobropolski, I'm just going
20 to ask you to read this letter aloud since your, this is your
21 handwriting, right?

22 A Yeah. Yeah.

23 THE COURT: Mr. Harding, may I suggest? Do you have
24 another copy of it?

25 MR. HARDING: Yes.

1 THE COURT: This is an instance where I think it would
2 make more sense if you could give the witness a hard copy and
3 leave a copy on the monitor for the jury to follow along.

4 MR. HARDING: I completely agree, Your Honor.

5 THE COURT: All right. Mr. Dobropolski, I'm going to
6 ask you to read it very slowly, much more slowly than you would
7 normally talk. All right?

8 THE WITNESS: All right.

9 BY MR. HARDING:

10 Q What's the date at the top, Mr. Dobropolski?

11 A 5/23/03.

12 Q Okay. So that's about eight or nine months after you had
13 these conversations with Mr. Harris in CBIF, is that correct?

14 A Yes, it is.

15 Q Any particular reason why you waited so long before you
16 reported it to anybody?

17 A Yeah. Several reasons. I was a criminal for a long time,
18 and it's just something you really don't do. Just the nature of
19 it.

20 Q You were reluctant to report it?

21 A Sure. It's a hard thing for me to sit right here. I'm
22 usually on other side where they are. You know what? It's a
23 hard thing if you've been into criminal activity for a long time
24 and like kind of grew up around that stuff. But like I said, the
25 nature of the crimes and, you know, what Mr. Harris told me about

1 basically killing people for, someone asked him to was kind of, I
2 didn't want that stuff on my conscience, if he continued, you
3 know, to kill people. I would feel a little bit responsible for
4 it. So it kind of put me in a, in a bad situation, like
5 position.

6 Q Do you remember the name of your judge that you wrote this
7 letter to?

8 A Judge Byrnes. J. Norris Byrnes.

9 Q Is he a Circuit Court judge in Baltimore County?

10 A Yes, he is.

11 Q Okay. Go ahead and read the letter.

12 A Dear sir: I would like to ask if you could arrange a
13 private hearing or maybe a meeting in your chambers between
14 myself and a narcotics officer from Baltimore's Southern District
15 named Tommy Mallin. This is the only officer that I'm willing to
16 talk to. I believe that I came across vital information
17 concerning a double murder in Northwest Baltimore. However, and
18 I'm firm about this, I will not and cannot work or speak with
19 officers while I'm incarcerated nor am I willing to speak with
20 any detectives or investigators that may attempt to interview me
21 at this, at this prison.

22 Please don't think it's my intention to be
23 disrespectful. The information that I've acquired could get me
24 killed. And I have another offer that I would like to speak with
25 you and Officer Mallin about. And please, if the information

1 that I have along with the offer I make is deemed relevant and
2 valid, would you consider modifying my sentence? That way --
3 that's the only way that I will be able to work with law
4 enforcement. And sir, please don't send anyone to attempt to
5 interview me. I won't talk. You would seriously put me at risk.
6 Just trust me and set up a meeting. Sincerely, Mr. Dobropolski.

7 The information I have is about a double murder that
8 took place in Northwest Baltimore in the Park Heights area. A
9 male and a female were shot multiple times while sitting in their
10 vehicle. After they were shot, the car drifted down the street,
11 came to a stop, and that's where the bodies were found. The
12 cause of death, gunshot wounds to the head. I have no
13 involvement in the crime. I believe I was incarcerated when it
14 took place. A person claiming to be the shooter confided in me.

15 Q Okay. Who's this Tommy Mallins guy that you say is the only
16 guy you're willing to talk to about it?

17 A He was a narcotics officer in Southern District that I'm
18 pretty, pretty tight with. And he ended up being a homicide
19 detective when I wrote this letter.

20 Q Did he, in fact, come to talk to you?

21 A Yes, he did. Yes. Yes, he did.

22 Q Did he come with another homicide detective?

23 A Gary Niedner, detective.

24 Q Okay. Did you agree to talk to them even though you were
25 still locked up?

1 A Yes.

2 Q Okay. Did they show you photo arrays when you came to talk
3 to them?

4 A Yes, they did.

5 Q Okay. I'm going to show you, first of all, what's been
6 marked as Government Exhibit MB-40. Let me show you, is that
7 your signature at the top there, Mr. Dobropolski? I guess you
8 can't see it very well.

9 A Yeah.

10 Q Okay?

11 A Yes.

12 Q Sorry?

13 A Yes.

14 Q Did Detective Mallins and Gary Niedermeyer also sign their
15 names to it?

16 A Yeah, I think, yeah. It's something underneath of it.
17 Sure.

18 Q And is there a date and time on there? Can you read the
19 date and time?

20 A I think it's 10/2/03, or something.

21 Q Okay.

22 A The time is 1:00 p.m.

23 Q Okay. And then on the back, did you make this statement
24 that's written on the back here?

25 A Yes, I did.

1 Q Can you read it?

2 A Yes. You have to slide it over some.

3 Q Is that better?

4 A Yeah. That's good. This is Shelton Harris, the person --
5 this is Shelton Harris, a person that confessed to a double
6 homicide that took place in Northwest Baltimore. The person he
7 said that he killed was a male and a female. Shelton stated to
8 me that he committed these murders for a friend. The friend's
9 AKA is Bo.

10 Q Okay. Is that your signature right after it?

11 A Yes, it is.

12 Q And of course, the date and time appear immediately above
13 it, once again, is that correct?

14 A 10/2/03, 1:00 p.m.

15 Q Now I'm going to show you MB-39. Is that your signature on
16 that?

17 A Yes, it is.

18 Q And again, it has the date and time, and the detectives'
19 signatures, is that correct?

20 A Yes.

21 Q And now I want you to read what's on the back of this one.

22 A All right. This is a person that introduced himself to me
23 as Bo. Bo stated to me that he and Shelton Harris handled some
24 business for him concerning homicides.

25 Q Sorry. Could you read that last sentence one more time?

1 A Bo stated to me that he had Shelton Harris handle some
2 business for him concerning homicides.

3 Q Okay. Is "handle some business" a phrase, you put it in
4 quotation marks, is that a phrase that you and people in your
5 community use?

6 A Yeah. Yes.

7 Q What does it mean?

8 A Depending on the conversation. The conversation that we
9 were having, it was concerning homicides.

10 Q Okay. Now, at that time, when you were locked up and
11 Detective Mallins and Detective Niedermeyer came to talk to you
12 in October of 2003, what were you locked up for?

13 A Assault charge, it was domestic violence.

14 Q Okay.

15 A A violation. Violation of parole.

16 Q Okay. What did you do to violate your parole?

17 A I left Second Genesis, violated a court order.

18 Q You left Second Genesis?

19 A Yes. And I violated a court order.

20 Q I see. What is Second Genesis? Can you tell us what Second
21 Genesis is, Mr. Dobropolski?

22 A Oh, substance abuse rehabilitation center.

23 Q So you were in a substance abuse rehab center and you left
24 it, is that your testimony?

25 A Yes.

1 Q And that violated the Court's order?

2 A Yes, it did.

3 Q Because a judge had paroled you on a domestic violence
4 offense?

5 A Yes, he did.

6 Q But since you violated the court order, you had to go back
7 to jail. Is that it?

8 A Yeah. I left the rehabilitation center. I wasn't supposed
9 to.

10 Q Right. I understand. Okay. So did the detectives talk to
11 you about doing some work for them on the street once you got
12 out?

13 MR. MARTIN: Objection.

14 THE COURT: Overruled. You may answer.

15 A Yes, they did.

16 Q What did they want you to do?

17 A To set Mr. Harris up.

18 Q Set him up how?

19 A With wires, digital and analog recorders, and things like
20 that.

21 Q So they wanted you to wear a recording device?

22 A Yes, they did.

23 Q And they wanted you to go talk to Mr. Harris?

24 A Yeah.

25 Q Was he out of jail by that time?

1 A Yes, he was.

2 Q And did you agree to do that?

3 A Yeah.

4 Q What kind of conversations did they want you to have with
5 Mr. Harris?

6 A To see if he would talk about anything concerning a
7 homicide. See if I can get him to bite on anything.

8 Q Okay. Did you agree to do that?

9 A Yes, I did.

10 Q Did they then go before Judge Byrnes with a city prosecutor
11 and a county prosecutor and apply to have your, your sentence
12 modified so that you could get back out on to the street?

13 A Yes, they did.

14 Q And so did you go before Judge Byrnes, the same one to whom
15 you'd written the letter?

16 A Yes.

17 Q Do you remember the name of the city homicide Assistant
18 State's Attorney who went with you?

19 A Say it again.

20 Q Do you remember the name of the city prosecutor or the
21 county prosecutor who went with you to court that day?

22 A County pros -- I'm not sure.

23 Q What about the detectives? What detectives went with you,
24 if you remember?

25 A Tommy Mallin. I think Niedermeyer was there. I think Keith

1 was there. Keith Benson, I think, was there. There was, it was
2 a handful of people. I really --

3 Q Okay.

4 A John was there.

5 Q John?

6 A Yeah.

7 Q What's his last name?

8 A Detective -- I can't remember his last name. Giganti. John
9 Giganti, I think, was there.

10 Q Okay. This was before there was any kind of federal
11 investigation in place, is that correct?

12 A Right.

13 MR. KURLAND: Objection.

14 THE COURT: Overruled. Well, the witness may not know
15 whether there was a federal investigation or not.

16 BY MR. HARDING:

17 Q Okay. Did the judge, Judge Byrnes, agree to modify your
18 sentence?

19 A Yes, he did.

20 Q And so did you get back out on to the street?

21 A Yup. With the stipulation that I help law enforcement, the
22 homicide detectives.

23 Q Do you know when the, when the detectives spoke to the judge
24 and the state prosecutors talked to the judge, did they check
25 with the victim of the domestic assault case that you were locked

1 up on at this time?

2 MR. LAWLOR: Objection.

3 THE COURT: Do you know whether they did?

4 THE WITNESS: Yeah.

5 THE COURT: Okay. And this actually happened in front
6 of a judge? In a courtroom?

7 THE WITNESS: No. Well, I'm still in contact with her.
8 She let me know that --

9 MR. LAWLOR: Objection.

10 THE COURT: No. My question is Mr. Harding's been
11 asking you who went with you in front of the judge. My question
12 is, did all of you actually go in front of a judge in connection
13 with your release?

14 THE WITNESS: Except for, except for the victim in my
15 case.

16 THE COURT: Okay. So all of you did go except for the
17 victim?

18 THE WITNESS: Except for the victim.

19 THE COURT: Okay. Go ahead, Mr. Harding.

20 BY MR. HARDING:

21 Q And did people check with the victim to put, so that her
22 views could be represented to the Court, also?

23 A That's right.

24 MR. LAWLOR: Objection.

25 THE COURT: The objection's overruled. You may answer.

1 A Yes.

2 Q And what was her attitude toward you getting out?

3 A Yeah. Immediately.

4 Q It was okay with her?

5 A Um-hum.

6 Q Okay. So --

7 THE COURT: That's a yes?

8 THE WITNESS: Yes.

9 Q Can you tell us how much time you think got cut off your
10 sentence because of that? Or how much time you got out, how much
11 time you wound up not having to spend in jail that you would have
12 had to spend in jail if that hadn't happened?

13 A About eight months, seven or eight months. Something like
14 that.

15 Q Okay. Did you, in fact, go to work trying to record a
16 conversation with Mr. Harris as the detectives wanted you to?

17 A Yes.

18 Q And did you sometime after that testify in a federal grand
19 jury?

20 A Yes, I did.

21 Q You don't remember the date of that, do you, Mr.
22 Dobropolski?

23 A Not right offhand.

24 Q Would it refresh your recollection to look at the transcript
25 of your grand jury testimony?

1 A It might.

2 Q Okay. Just, does that refresh your recollection as to what
3 the date was when you testified?

4 A Yes.

5 Q What was it?

6 A November 19th, 2003.

7 Q Thank you.

8 A You're welcome.

9 Q Now, these meetings that you were going to have with Mr.
10 Harris to try to record a conversation with him, how were you
11 going to meet up with him?

12 A Bump into him.

13 Q I'm sorry?

14 A Just like something casual. Like act, I mean, bump into him
15 but, of course, it would be set up, happen at Parole and
16 Probation while he was seeing his parole officer. I was taken
17 with other detectives.

18 Q I see.

19 A I was wearing recording devices.

20 Q Okay. So you're both out of jail. You're both on
21 probation. So you were going to run into him at the probation
22 office?

23 A Yes.

24 Q Do you recall how many times you tried to record a
25 conversation with Mr. Harris at the probation office?

1 A Twice.

2 Q Okay. Was there, I guess there were other people there at
3 the probation office, is that correct?

4 A Yes.

5 Q Was there a lot of noise?

6 A Yeah. It's a pretty loud place. It's a lot, it's a lot of
7 people in there. One of the bigger probation offices.

8 Q And where was this wire that you were wearing? Where was it
9 on your body?

10 A On my side.

11 Q Was it underneath clothing?

12 A Yes, it was.

13 Q Okay. I want to call your attention, first of all, to
14 December 1st of 2003 and to a meeting that occurred on that day.
15 Do you remember writing out in handwritten form an account of
16 what happened at that particular meeting you had with Mr. Harris?

17 A Yes.

18 Q Okay. I've got here Government Exhibit MB --

19 MR. MARTIN: Objection, Your Honor.

20 THE COURT: Members of the jury, I realize you've been
21 out here for, I guess, barely an hour, but we've been out here a
22 little longer than you have. So we're going to take our
23 mid-morning recess at this time.

24 Please leave your note pads on your chairs. Have no
25 discussion about the evidence. Continue to keep an open mind

1 about all issues. The jury is excused for a 15 minute recess.

2 (Jury exits the courtroom.)

3 THE COURT: Mr. Dobropolski is excused for 15 minutes.

4 (Witness exits the courtroom.)

5 THE COURT: Mr. Harding, the objection seems to be well
6 taken. How do you propose to proceed with this? Are you going
7 to ask the witness, are you going to use it as past recollection
8 refreshed or past recollection recorded or --

9 MR. HARDING: I am going to ask him to account in his
10 own terms what happened. And then I'm going to ask him if he
11 needs to refresh his recollection by looking at his statement.

12 THE COURT: Okay. So you don't really need to show him
13 any of the statements until after you've questioned him.

14 MR. HARDING: I will move it into evidence as past
15 recollection recorded if it doesn't refresh his recollection.

16 THE COURT: All right.

17 MR. KURLAND: Your Honor, objection. Past recollection
18 recorded --

19 THE COURT: Just, please. Please, please.

20 MR. KURLAND: Sorry.

21 THE COURT: So you're not going to show it to him until
22 after you've questioned him about what happened?

23 MR. HARDING: Yeah. I then propose to play the actual
24 section of the tape, which is a very poor quality tape, as the
25 Court has heard. But you can actually hear fragments of --

1 THE COURT: Okay. How long is the tape? The first
2 one.

3 MR. HARDING: We're going to play about seven or eight
4 minutes of it.

5 THE COURT: We got to sit here and listen to a lot of
6 stuff we can't hear or understand for seven minutes? Okay.

7 MR. HARDING: I'm afraid so, Your Honor.

8 THE COURT: I understand. I understand.

9 MR. HARDING: I also have one phone conversation I'm
10 going to play, which you can hear well.

11 THE COURT: Okay. And did anybody check to see whether
12 it's possible -- these are CD's?

13 MR. HARDING: Yes.

14 THE COURT: And do we have a CD player built into the
15 system? I'm looking at Mr. Hanlon.

16 MS. RHODES: Yes. There is, that's what I used to play
17 those.

18 THE COURT: So it worked for you, Ms. Rhodes?

19 MS. RHODES: Yes.

20 THE COURT: Well, then, I think it should work for the
21 government.

22 MR. HARDING: I think it should, too. I just don't
23 know how to do it. Mr. Hanlon and others can help.

24 THE COURT: Mr. Hanlon and Ms. Rhodes together, and
25 with Ms. Arrington's supervision, can figure out how to do it.

1 Mr. Flannery seems to be volunteering.

2 MR. FLANNERY: I went through this in preparation for
3 this this Friday with IT. And the best system is these speakers.
4 When you put it through the court system, the poor quality, the
5 level, the volume that you have to have it at to hear anything,
6 it creates interference.

7 THE COURT: If other words, Straight Out of Compton is
8 fine in the DOAR.

9 MR. FLANNERY: Because the quality is sufficient that
10 you can have the volume low enough that it won't create
11 interference. That starts buzzing in the courtroom. I've tried
12 it.

13 THE COURT: All right.

14 MR. FLANNERY: You can take my word at it or you can
15 try it.

16 THE COURT: I believe Mr. Flannery. We'll see how it
17 goes. Maybe --

18 MR. HARDING: Judge, could I be heard briefly about the
19 statement that the Court did not allow the witness to say?

20 THE COURT: Yeah. What was that all about?

21 MR. HARDING: Okay.

22 THE COURT: First of all, who's the codefendant?
23 Martin?

24 MR. HARDING: Yeah.

25 THE COURT: So what was that all about? You didn't

1 alert me to that. Or at least I missed it if you did.

2 MR. HARDING: Well, I think it was in the grand jury
3 testimony so the, it's not as if defense counsel were unaware of
4 it.

5 THE COURT: Clearly, they're aware of it. They
6 objected.

7 MR. HARDING: Bo, Mr. Mitchell and Mr. Dobropolski are
8 having this discussion about all the stuff they're going to do
9 together. And Bo mentions that his codefendant should take the
10 charge that he, Bo, is locked up for because his codefendant had
11 blabbed to his girlfriend about what had happened. Therefore,
12 the codefendant should take the charge. That means Bo's going to
13 get out. Bo's going to be out of jail pretty soon and will be
14 able to pursue these ventures with Mr. Dobropolski and Mr.
15 Harris.

16 THE COURT: All right. I'm pretty sure that's not a
17 statement in furtherance of the conspiracy, certainly not the way
18 you set it up with the witness.

19 Now, first of all, who's the codefendant and who's the
20 girlfriend?

21 MR. HARDING: Well, the codefendant would be Mr.
22 Martin. He was locked up on April 17th for the murder, along
23 with Mr. Mitchell.

24 THE COURT: Of Mr. McCaffity and Ms. Brown?

25 MR. HARDING: No. This is the Wyche brothers murder.

1 THE COURT: See, that's why I was lost. So who's the
2 girlfriend? And what's that all about?

3 MR. HARDING: Okay. Mr. Martin had a girlfriend named
4 Lakeisha McCoy.

5 THE COURT: Right.

6 MR. HARDING: And you may be aware that Lakeisha McCoy
7 became Martin's alibi witness.

8 THE COURT: Right.

9 MR. HARDING: So --

10 THE COURT: The whole, the movie thing?

11 MR. HARDING: Yeah.

12 THE COURT: Right.

13 MR. HARDING: Okay. So that's by way of background,
14 because Bo doesn't explain this to Mr. Dobropolski. All he says
15 is that his codefendant should take the charge because he blabbed
16 to his girlfriend about what had happened, suggesting --

17 THE COURT: And I hadn't heard that before. I had not
18 heard that Mr. Martin made an incriminating admission to Ms.
19 McCoy. Do you mean that they didn't really go to the movies? Is
20 that what you're getting at?

21 MR. HARDING: No. The whole alibi is a hoax, Your
22 Honor.

23 THE COURT: I understand.

24 MR. HARDING: I said that in my opening.

25 THE COURT: I understand that. But you see my problem

1 now? What did, what did Martin allegedly Blab to McCoy? You
2 seem to be saying he didn't blab anything.

3 MR. HARDING: He blabbed his, that he committed the
4 offense. He blabbed that he committed the Wyche brothers murder.

5 THE COURT: When did he do that?

6 MR. HARDING: Well, we only know what Bo said to
7 Dobropolski.

8 THE COURT: Okay. So McCoy denies that Martin
9 confessed to the Wyche brothers' murders? Is that right?

10 MR. HARDING: Well, McCoy became the alibi witness. So
11 I guess you could say that sort of indirectly. But I think
12 that's all rather beside the point.

13 THE COURT: It's not beside the point, Mr. Harding, if
14 I'm trying to understand what you're talking about. So what
15 you're saying is, if, just tell me if I have it right. Martin
16 didn't say anything to McCoy about any murder, etc. In fact,
17 McCoy is his alibi witness. So what Bo, what, if I understand
18 it, you want the witness to tell the jury that Bo essentially
19 lied to Dobropolski or --

20 MR. HARDING: No.

21 THE COURT: Expressed the unadorned opinion to
22 Dobropolski that Martin should take the charge on the Wyche
23 murders because Martin made an admission to his girlfriend,
24 McCoy, and therefore if he hadn't done that, neither he, Bo, nor
25 Mr. Martin would have been arrested. Now, that's what makes

1 sense. I'm not saying that's true. But that's the only sense
2 that any of this makes. So now you clarify for me.

3 MR. HARDING: Well, I don't know what Mr. Martin said
4 to his girlfriend.

5 THE COURT: Of course. Right. Okay.

6 MR. HARDING: All we know is --

7 THE COURT: And we don't know if Bo knows what Mr.
8 Martin said to his girlfriend, if anything.

9 MR. HARDING: We know that Bo claimed that Mr.
10 Dobropolski --

11 THE COURT: That Martin should take the charge.

12 MR. HARDING: That Martin should take the charge
13 because --

14 THE COURT: And he attached the reason for that
15 opinion.

16 MR. HARDING: Because Martin had blabbed to his
17 girlfriend.

18 THE COURT: Well, that's not in furtherance of the
19 conspiracy.

20 MR. HARDING: I suggest that it is, Your Honor.

21 THE COURT: Well, I'm ruling that it's not. Okay.
22 We've moved past it. The jury's forgotten it. It wasn't
23 critical to anything. All right.

24 I think Mr. Kurland had first dibs, Mr. Crowe.

25 MR. KURLAND: Well, I will allow --

1 THE COURT: Mr. Crowe, the gentleman yields back the
2 balance of his time.

3 MR. CROWE: Thank you, Your Honor.

4 MR. KURLAND: Not the entire balance.

5 MR. CROWE: Your Honor, today is the first time that I
6 have heard or seen anything concerning the topic of Mr. Martin
7 supposedly making a statement for anything.

8 THE COURT: It's out. It's out. It's out. We're not
9 going back there.

10 MR. CROWE: If, in fact, it is in the grand jury, I
11 would ask that the prosecutor tell me where it is. If, in fact,
12 it is in anything that is written, I would ask him to do that as
13 well.

14 THE COURT: It's ruled out.

15 MR. CROWE: It may be ruled out but the jury has heard
16 that a codefendant made a statement to his girlfriend and --

17 THE COURT: And the jury has no idea, absolutely no
18 idea, any more idea than I do who he was talking about.

19 MR. CROWE: Well, Your Honor, Your Honor indicated that
20 he knew very well who they were talking about. And I assume that
21 the jury --

22 THE COURT: No.

23 MR. CROWE: Before this case is over, the jury is going
24 to want --

25 THE COURT: Wait a minute. Let me be very clear. Part

1 of the reason I sustained the objection, and there were several,
2 I had no idea who he was talking about. When he said Bo talked
3 about a codefendant, I have no idea that Martin, I mean, I'm sure
4 the government will make this clear in closing argument, but I
5 don't remember that Martin and Mitchell got arrested for the
6 Wyche brothers in April of 2002. I mean, I wish I had that kind
7 of brain.

8 MR. CROWE: Your Honor, there's been considerable
9 testimony both in pretrial hearings and here that Mr. Mitchell
10 was arrested on April 1, Mr. Martin was arrested on April 17th.

11 THE COURT: Right.

12 MR. CROWE: That the other defendants were not
13 arrested, were not arrested or charged with this until years
14 later.

15 There's going to be, I expect, another witness who is
16 going to testify about going to the state court proceeding that
17 had to do with the Wyche brothers charges, where Mr. Mitchell and
18 my client were the only people in there.

19 THE COURT: I'm sorry. Why, I mean, I understand Mr.
20 Kurland and Mr. Coburn's point regarding Mr. Gardner and the
21 Jones-Spence murder, but why would we ever get into state court
22 proceedings regarding the Wyche brothers' murders? I haven't
23 heard any evidence.

24 MR. CROWE: Maybe I could just ask the prosecution if
25 we're going to hear a witness talk about that.

1 MR. HARDING: Sorry. Talk about?

2 THE COURT: The state court proceedings related to the
3 Wyche brothers' murders.

4 MR. HARDING: Not exactly the state court proceedings,
5 no.

6 THE COURT: Right. Right.

7 MR. CROWE: We have gotten grand jury testimony.

8 MR. HARDING: That I'm aware of at the moment.

9 MR. CROWE: In any event, Your Honor, the jury is
10 certainly going to become aware that the only codefendant at that
11 time was Mr. Martin. We had absolutely no, we had absolutely no
12 indication that the government was going to try to get any sort
13 of a statement of this in, of this sort in. If it had, it would
14 have been something that we would have taken up before the
15 witness testified.

16 The jury has heard a statement about, about the fact
17 that a girlfriend, about the fact that a codefendant, and that
18 was only Mr. Martin at the time, for the charge that Mr. Mitchell
19 was locked up on, had made a statement. And the jury is clearly
20 going to conclude after it hears all the evidence that this had
21 something to do with the alibi, which is a matter that the
22 government is going to try to disparage.

23 I won't do it now, but we've got a couple of points
24 that we'd like to talk about in terms of a mistrial. We'll do
25 that at an appropriate time. I just don't understand how the

1 government tried to get this in with no notice to us at all.

2 And if they can show that we had notice, I'll
3 apologize.

4 THE COURT: Well, they didn't get it in. And I'm sorry
5 to disappoint counsel, I'm telling you my best guess is that the
6 jury, like the Court, thought Mr. Mitchell was in as a result of
7 getting arrested with that handgun. Nobody, nobody, I'm
8 confident that nobody on this jury has consciousness now, they
9 will, I'm sure, but at the time of that examination, nobody on
10 this jury had consciousness that Mr. Mitchell had been arrested
11 and charged with the Wyche brothers' murders.

12 We haven't even gone over those murders yet. I mean,
13 we haven't. You know, we haven't gone over them.

14 So the thing that, if anything, the jury remembers is
15 what I remember, and that is that Mr. Mitchell got arrested in a
16 car and there was a firearm in an ankle holster. That's what the
17 jury's thinking. If anything. Anyway, Mr. Kurland.

18 MR. KURLAND: Judge, just two quick points.

19 THE COURT: You want to talk about past recollection?

20 MR. KURLAND: From my vantage point, I can't see
21 exactly what Mr. Harding was referring to. But past
22 recollection, if it qualifies, doesn't come in. So we would
23 object to any effort to get it actually physically before the
24 jury.

25 The second thing is, a little bit perspectively, I

1 don't know what time we're going to get to Mr. Montgomery, but at
2 the time Mr. Montgomery is called, there are going to be a few
3 things that Mr. Coburn and I need to address outside the presence
4 of the jury. So hopefully it could be at break in which it
5 wouldn't be --

6 THE COURT: Actually, I would like to do that now. How
7 much more do you have with Mr. Dobropolski, roughly, Mr. Harding?

8 MR. HARDING: Ten or fifteen minutes.

9 THE COURT: Ten to fifteen minutes. And then Mr.
10 Montgomery is next?

11 MR. HARDING: I've got to play the disk.

12 THE COURT: Right. Is Montgomery next?

13 MR. HARDING: Yeah, Mr. Montgomery is next.

14 THE COURT: All right. Let me ask you, Mr. Kurland,
15 have you and Mr. Coburn had a chance to discuss your motion with
16 Mr. Gardner?

17 MR. KURLAND: Yes.

18 THE COURT: And are you and Mr. Coburn satisfied that
19 you've had a full exchange with Mr. Gardner regarding that issue?
20 Referring, of course, to the admissibility of Mr. Gardner's
21 conviction and/or sentence in state court.

22 MR. KURLAND: I think Mr. Coburn could factually speak
23 to that, to that particular issue.

24 THE COURT: It's a fairly straightforward question, Mr.
25 Coburn. Are you satisfied that you've had a chance to discuss

1 this fully with Mr. Gardner?

2 MR. COBURN: You know, Your Honor, as I hear Your Honor
3 pose the question, I'm not 100% sure that I am completely
4 satisfied. I can tell Your Honor that it's been explored.

5 THE COURT: All right.

6 MR. COBURN: But I don't know that it's been explored
7 as fully as it could be.

8 THE COURT: All right. Mr. Gardner, your lawyers have
9 proposed that the Court permit them to introduce in this trial
10 evidence that you have already been tried and convicted for the
11 murder of Tonya Jones-Spence in state court. In their judgment,
12 as potentially prejudicial as that evidence might be to you, in
13 their judgment, in their professional judgment, considering what
14 the government's burden is here, what the evidence is, what the
15 evidence is likely to be going forward, they believe that you
16 will be better off if they introduce that evidence or otherwise
17 acquiesces in its introduction than if the jury is kept from
18 learning that you have been previously convicted. And they have
19 tried to discuss this with you.

20 It's a very, very important decision that they have
21 thought about tirelessly for a long time. And they've made their
22 decision.

23 Do you have any questions of the Court about this or
24 for your attorneys, Mr. Gardner?

25 DEFENDANT GARDNER: You making me an offer, sir?

1 THE COURT: All right. Let the record reflect that Mr.
2 Gardner responded to the Court's question, "are you making me an
3 offer, sir?" Mr. Gardner, the court is of a mind, subject to
4 hearing from government counsel and from your codefendants'
5 counsel, to permit the lawyers who represent you to have the jury
6 learn this information. And I'm giving you this opportunity now
7 and after the recess to speak either to the Court about it, if
8 you choose to, or to your attorneys if you choose to. Do you
9 understand what I have said, sir?

10 DEFENDANT GARDNER: I accept your offer for value,
11 return your offer for value.

12 THE COURT: Let the record reflect that Mr. Gardner
13 said something about accepting an offer for value and returning
14 an offer for value. The Court can't make any sense of it.

15 All right. Briefly, Mr. Kurland. Anything you want to
16 say in that light?

17 MR. KURLAND: Your Honor, we would ask that the
18 evidence be admitted of Mr. Gardner's prior conviction and actual
19 sentence of life without possibility of parole.

20 THE COURT: All right. When we come back, I'll here
21 from the government, I'll hear from other counsel, either after
22 lunch or before lunch. It's now afternoon.

23 Obviously, those are separate questions. I mean, the
24 question breaks, the question breaks down into several subparts.
25 For example, the principal question: Will the Court permit the

1 jury to learn that Mr. Gardner has been convicted? If yes, how
2 much, if any, detail and additional facts concerning the
3 conviction will the Court permit the jury to learn? One.

4 Will the Court permit or insist that the jury learn
5 that it's a jury conviction? Will the Court permit or insist
6 that Mr. Gardner's sentence be disclosed to the jury?

7 And third, will the Court permit the government to
8 elicit the evidence? Will the Court prohibit the government and
9 permit you to elicit the evidence? Or will the Court require a
10 stipulation which the Court can advise the jury of?

11 So those are the subsidiary questions that don't, the
12 answer to which don't automatically follow from a ruling that the
13 evidence should be permitted.

14 I also need to hear from other counsel because they
15 have an interest in this question, at least that entitles them to
16 be heard.

17 MR. KURLAND: Your Honor, as the Court knows, this is
18 something that Mr. Coburn and I have struggled with for several
19 years.

20 THE COURT: Right.

21 MR. KURLAND: But to us, it isn't, it isn't uncoupled,
22 that the issue with respect to the prior conviction and the
23 actual sentence is very much integral to our defense. And if the
24 Court is only of a mind to --

25 THE COURT: Well, I said, we'll cover that. I'm just

1 saying it's not automatic. I understand you don't want the, I
2 assume you don't want the conviction in without the sentence
3 because you don't want to leave the impression to the jury that
4 he got acquitted or that he got a five year sentence.

5 MR. KURLAND: Yes, that's right.

6 THE COURT: I understand that.

7 MR. KURLAND: And we briefed that and the Court is well
8 aware of the misleading impression issues, particularly in light
9 of everything else that's gone on, as to what appears to be some
10 sort of revolving door, you know, trial.

11 THE COURT: All right. I got it. All right. Let's
12 stand in recess for 15 minutes.

13 MR. KURLAND: All right. Thank you, Your Honor.

14 (Recess.)

15 THE COURT: We'll have the jury, please.

16 MR. MARTIN: Your Honor, just as a reminder, I have a
17 board meeting this afternoon. So I should be out of here to get
18 up Downtown, there's a complication with the students, I have to
19 be there by four, so I should have 20 minutes once I leave here.
20 So if we could leave at 3:40.

21 THE COURT: All right. Fine.

22 MR. MARTIN: I suspect I'm going to be in the middle of
23 my cross when that happens.

24 (Jury enters the courtroom.)

25 THE COURT: Please be seated, ladies and gentlemen.

1 Whenever you're ready, Mr. Harding.

2 BY MR. HARDING:

3 Q Thank you, Your Honor. Mr. Dobropolski, when we broke we
4 were talking about an occasion in December of '03 when you went
5 to Parole and Probation to meet with, to try to met with Mr.
6 Harris. Do you recall that?

7 A Yes.

8 Q Okay. Now, do you recall what you first started talking to
9 him about when you ran into him there?

10 A When I first started talking to him about? He brought up,
11 he brought up robbing drug dealers, Ecstasy dealer out in
12 Delaware.

13 Q Okay. Let me ask you if -- you testified that you wrote out
14 a written statement about your meeting that day. Would it
15 refresh your recollection to refer to your notes on that?

16 MR. MARTIN: Objection, Your Honor. He didn't say he
17 didn't have any recollection.

18 THE COURT: Right. Let's see what he remembers. Go
19 ahead, Mr. Harding.

20 Q Okay. Did you have, did you have a discussion about having
21 trouble getting a hold of him?

22 A Yes.

23 Q Okay. Had you changed home addresses?

24 A Yes, I did.

25 Q Did you explain that to him?

1 A Yes.

2 Q Did you explain to him why you had -- were you afraid you
3 were going to be violated on your probation?

4 MR. MARTIN: Objection, Your Honor.

5 THE COURT: Overruled. You may answer.

6 A Not really, but that's what I said.

7 Q Okay. What did you tell Mr. Harris?

8 A I can't remember precisely what, I can't remember exactly
9 what I told him.

10 Q Would it refresh your recollection to look at your
11 handwritten statement?

12 A Maybe. Let me see it, please.

13 THE COURT: Mr. Harding, you can have him tell the jury
14 when he made the statement and so forth.

15 Q Mr. Dobropolski, can I ask you to turn to the second page of
16 this and then I'll ask you, did you write the date at the bottom
17 of this statement?

18 A Did I write the date?

19 Q Yeah.

20 A No. Write a statement for -- no, that's not my handwriting.

21 Q Somebody else wrote that? Okay.

22 A Underneath my name, yeah.

23 Q Did you sign your name to it?

24 A Yeah, I signed my name at the bottom. I think Detective
25 John Giganti who signed and dated, 12/11/03.

1 Q Okay. Is that when you wrote out, did you write out this
2 statement yourself? Is this your handwriting?

3 A Yes, it is.

4 Q Do you recall, when you wrote it out, was it the same day
5 that you had this conversation with Mr. Harris or later?

6 MR. KURLAND: Objection, Your Honor.

7 THE COURT: Overruled. You may answer.

8 A Yes, it is.

9 Q It was the same day?

10 A Yep.

11 Q Okay. Have you had a chance to refresh your recollection
12 about this conversation you had about being afraid of, being
13 violated on your probation?

14 A Yeah. I just said that. I don't think I was really worried
15 about violating my probation.

16 Q What did you tell Mr. Harris?

17 A That I was scared I would get violated. That's why I
18 changed home addresses.

19 Q And did you speculate as to why you were going to be
20 violated?

21 A A couple dirty urines.

22 Q Okay. Are you saying that wasn't true, that you were just
23 saying that to Mr. Harris?

24 A Yeah. Actually, well, I was violated for dirty urines but
25 not at the time, no. I was --

1 Q Okay.

2 A I was just saying that to say that.

3 Q At that point in the conversation, what happened?

4 A On my thing is I walked outside, smoked a cigarette, waited
5 for Shelton. Yeah, actually, I did. I left before Shelton. He
6 went up and talked to his parole officer. I think it was a
7 supervisor, supervising parole officer. But while I was waiting
8 for him, I went outside and smoked a cigarette.

9 Q Okay. Did there come a time when Mr. Harris came down out
10 of his appointment with his probation officer?

11 A Yes.

12 Q What happened then?

13 A He came outside, reached in the garbage can, grabbed a box
14 cutter. And I lit up another cigarette.

15 Q What did he say when he was grabbing his box cutter out of
16 the garbage can?

17 A I have to get my shit.

18 Q And what did you take that to mean?

19 A A weapon. That's usually where people keep them at. Parole
20 and Probation right there.

21 Q Okay. What did you talk about then?

22 A Oh, plans we had made before to stick up, take drug dealers
23 off.

24 Q Did you, what did you say about that?

25 A I said there was an Ecstasy dealer. Well, I told Mr. Harris

1 when we were at Central Booking there was an Ecstasy dealer in
2 Delaware that we could probably take off for about 80 grand. I
3 was talking to Mr. Harris that day, I explained to him that we
4 can probably go get it but we might have to kill some people in
5 the house and it didn't really bother me too much.

6 Q Okay. Did you then have a discussion about something you
7 had heard at CBIF, Central Booking?

8 A No. Actually, when I was in Cumberland.

9 MR. KURLAND: Your Honor, objection. Is the witness
10 supposed to be reading from the paper?

11 THE COURT: I believe the witness has demonstrated that
12 he doesn't recall the specifics. So Mr. Harding, if you want him
13 to read it, apparently there's an objection to the jury seeing
14 it. But if you want to read it to him and have him verify your
15 reading or have him read it, I'll permit that.

16 MR. HARDING: Okay. Well, on Page Two, Mr. Harris, I'm
17 going to read the second to the last paragraph.

18 MR. KURLAND: Objection. The foundation for --

19 THE COURT: Overruled. Go ahead.

20 BY MR. HARDING:

21 Q Can I put it on the screen, Your Honor?

22 THE COURT: No. Don't show it. They don't want the
23 jury to see it but you can read it.

24 Q I also told Shelton that when I was in prison I heard about
25 his work, which he told me about over CBIF, and I told him the

1 alias name of the person he killed, Woody. He smiled and shook
2 his head as if to let me know that I was correct. I also told
3 Shelton that I had argued with the guy Woody, and a friend of
4 his, Eric, back in 1996. Woody and Eric sold drugs and guns in
5 the South Baltimore area back then. The final thing that I said
6 to Shelton was that the person in prison that was talking about
7 the murders he committed tried to claim his work, meaning that
8 Shelton didn't do it. Shelton got a strange look, angry look on
9 his face and stated, he tried to claim my work? Exclamation
10 point. I then told Shelton not to get mad, it was good when
11 people did that, and I ended the conversation. Shelton left and
12 so did I.

13 Is that what you wrote, Mr. Dobropolski?

14 A Yes.

15 Q Let me ask you a couple questions. You testified before
16 that the detectives wanted you to try to engage in a conversation
17 with Mr. Harris about this double murder involving Woody, is that
18 correct?

19 A That's right.

20 Q So did that have anything to do with your bringing up the
21 name "Woody" then?

22 A Yeah. I was trying to get him to talk about it a little
23 bit.

24 Q Okay. And you say that he shook his head and smiled when
25 you asked him about the alias name of the person he killed,

1 Woody. And you, and you wrote here, as if to let me know that I
2 was correct?

3 A That's right.

4 MR. MARTIN: Objection, Your Honor. This is all asked
5 and answered.

6 THE COURT: Overruled.

7 A That's right.

8 Q And then you start explaining that you had had an argument
9 with Woody back in 1996. Was that true or untrue?

10 A It is true, and I believe that they're the same people. I
11 think, I mean, Woody's not a really common name, whatever. But I
12 know that I was arguing with somebody in my neighborhood that
13 sold drugs and weapons. I got in an argument with a dude named
14 Woody and a guy named Eric. They were from Park Heights. So I
15 kind of, I was assuming that they were probably one and the same.

16 Q Okay. And then you mentioned that some guy in prison had
17 taken, had tried to claim credit for that murder, those murders.
18 Was that true?

19 A Yes. No one ever said that. I was just trying to engage
20 him in a consideration. He can talk about it a little bit more.

21 Q So that was a device you made up to get him to talk about
22 it?

23 A That's right.

24 Q Did it work?

25 A To a certain degree. I mean, yeah. I mean, he was kind of

1 upset that someone was taking his work, claiming his work. At
2 that time I told him, well, that's a good thing, because, you
3 know what I mean, it kind of gets the heat off you a little bit.
4 I remember the conversation.

5 Q Okay. Now, at this time, Your Honor, I'd like to play a
6 section, a few minutes from a tape recorded version of this
7 meeting.

8 THE COURT: Very well.

9 MR. HARDING: And if I could explain, we're playing it
10 over these speakers here on our table. We can't hook it up to
11 the courtroom system because we can't fast forward, if we do
12 that, to the spot I want to play. And I'm sure no one wants to
13 listen to all the preliminary stuff before we get to it.

14 THE COURT: All right.

15 (Tape playing.)

16 BY MR. HARDING:

17 Q So that's not a very good recording, is it, Mr. Dobropolski?

18 A No, it's not.

19 Q You can make out some of the phrases along the way, however?

20 A Yeah, a little bit.

21 Q Okay. I wanted to ask you about a couple of phrases that I,
22 I heard, and see if you heard them, too. At a couple of points
23 Mr. Harris appears to talk about a beeper and he gives you a
24 beeper number, is that correct?

25 A Right.

1 MR. MARTIN: Objection, Your Honor.

2 THE COURT: Overruled.

3 MR. MARTIN: The jury can determine that.

4 THE COURT: Overruled.

5 BY MR. HARDING:

6 Q Did he actually give you his beeper number that day?

7 A Yes, he did.

8 Q Okay. And at another point a little later on he says, oh,
9 he's trying to claim that. Do you remember that phrase?

10 A Yes, I do.

11 Q What's he talking about there?

12 A About his two murders in Rahman's car.

13 Q Okay. Is this the segment of the conversation, then, that
14 you were talking about when you say that you raised this issue of
15 Woody and made up this story about how someone was claiming
16 credit for it?

17 MR. MARTIN: Objection, Your Honor.

18 THE COURT: Overruled. You may answer.

19 A That's right.

20 Q Okay. And then there's a mention of, I'm about to get to my
21 man on North Avenue, my man on North Avenue?

22 A Um-hum.

23 Q What is he talking about there, do you know?

24 MR. MARTIN: Objection.

25 THE COURT: Overruled.

1 A He's talking about, I think, a studio or something.

2 MR. MARTIN: Objection.

3 THE COURT: Go ahead. Overruled.

4 A I believe he was talking about a studio where he was working
5 on some CD's or something, something of that nature.

6 Q Okay. Do you know who "my man" is, when he refers to my man
7 in here?

8 A No, I don't.

9 Q Okay. And then near the end of what we listened to, you
10 hear, what's up with you, Shorty? Do you recall that?

11 A Yeah. I think that was just somebody passing by.

12 Q So he wasn't talking to you?

13 MR. MARTIN: Objection. He didn't say who was talking.

14 THE COURT: Overruled. You may answer.

15 A I don't think so.

16 Q Okay. All right. Did you have another similar meeting with
17 Mr. Harris on January 8th of 2000 and -- sorry. January 8th of
18 2004, I think this would be.

19 A Yeah.

20 Q And did you try to record another conversation that day?

21 A Yes, I did.

22 Q And did you prepare another handwritten statement regarding
23 that meeting?

24 A Yes.

25 Q Do you recall what you talked about at that meeting?

1 A I think I was trying to hook up with him to go try to rob
2 these drug dealers, trying to get him to meet me.

3 Q Anything else?

4 A Not right offhand, no.

5 Q Would it refresh your recollection to look at your
6 handwritten statement?

7 A It might.

8 THE COURT: Just take your time and review that, Mr.
9 Dobropolski.

10 (Pause in proceedings.)

11 A I remember this. But the meeting didn't actually take
12 place.

13 Q It didn't take place?

14 A No. It didn't take place.

15 Q So what are your handwritten notes referring to?

16 A A phone conversation.

17 Q Oh, I see. So what did you talk about in the phone
18 conversation?

19 A Trying to hook up with him. Trying to meet with him so that
20 we could go ahead and set some drug dealers up to rob.

21 Q Okay. So you didn't actually meet with him on January 8th?

22 A No.

23 Q How about on January 6th? Did you have a meeting with him
24 on January 6th? I guess you would have no way of remembering
25 that date, would you? Let me ask you a different question. I

1 have here -- may I approach the witness, Your Honor?

2 THE COURT: Yes.

3 Q I have here an exhibit that actually isn't marked, but what
4 should be MB-50, I believe. You recognize that?

5 A Yeah.

6 Q What is it?

7 A It's Shelton's numbers. I'm not sure -- yeah, I think page
8 number and his cell number.

9 Q Did he write that out? Is that his writing or your writing?

10 A I think this is his writing. It's not mine.

11 Q Did you turn that over to the detectives after he gave it to
12 you?

13 A Yes, I did.

14 Q I'm going to put this on the screen. Okay. Does that say
15 Roc, 410-888 -- 880-1749. Do you see that?

16 A Right.

17 Q Is that the same beeper number that he gave to you in the
18 recorded conversation we just heard or do you recall?

19 A I think it is.

20 Q Okay.

21 A I know this number was given in the recording.

22 Q And then there's another number listed there as home, is
23 that correct?

24 A Right.

25 Q Okay. Did Mr. Harris get arrested, were you aware that he

1 got arrested later on in January on federal charges?

2 A Yes.

3 Q Okay. I'm going to show you part of an exhibit called HA-1,
4 which isn't in evidence yet. But I'm going to ask you about this
5 particular slip. Did you write that out?

6 A Yes, I did.

7 Q Okay. Now, after Mr. Harris got locked up on these federal
8 charges in 2004, did you have another probation violation hearing
9 in front of Judge Byrnes in May of 2004?

10 A Yes, I did.

11 Q And why was that?

12 A Dirty urines and failing to report.

13 Q Okay. So you had been out on the street and you were
14 charged with violating your probation, is that correct?

15 A Yes.

16 Q And you had a hearing in front of the same judge?

17 A Um-hum.

18 Q On that occasion, did I go out there to the courtroom, along
19 with a state prosecutor?

20 A Yes.

21 Q Okay. And do you recall, did I explain to the judge that
22 you were trying to cooperate with a federal investigation?

23 A Yes.

24 Q Did the judge agree to reinstate you on your probation?

25 A Yes, he did.

1 Q Did you, some months later, at the end of 2004, get
2 rearrested again?

3 A Yes, I did.

4 Q What did you get arrested for on that occasion?

5 A Domestic violence and unauthorized use.

6 Q And did you eventually get sent back to jail for that by the
7 judge?

8 A Right.

9 Q And so did you get out of jail eventually after you did the
10 time remaining on your probation?

11 A Yes.

12 Q Okay. And then did you get arrested more recently?

13 A Yes. Auto theft.

14 Q That's the auto theft charge you told us about at the
15 beginning, is that correct?

16 A Right.

17 Q You said you've been locked up now for 17 months, is that
18 right?

19 A Um-hum. Yes.

20 Q Okay. Did you serve your whole sentence for, the whole rest
21 of your probation time because of the violation you committed
22 when you picked up that car theft charge?

23 A Yeah.

24 Q Okay. So you didn't get any reduction in your sentence for
25 the fact that you had cooperated?

1 A No. Eight years. Eight years.

2 Q Okay. That was the time remaining from your eight years
3 year sentence, is that what you're saying?

4 A Yeah. The rest of the time.

5 Q Okay. One minute. No further questions, Your Honor.

6 THE COURT: Mr. Martin, why don't you go ahead and get
7 started? We'll go a few minutes and then we'll break for lunch.

8 MR. MARTIN: All right, Your Honor. Thank you.

9 THE COURT: And you can complete your examination after
10 lunch.

11 CROSS EXAMINATION

12 BY MR. MARTIN:

13 Q Mr. Dobropolski, good afternoon.

14 A Good afternoon.

15 Q My name's Gerry Martin and I represent Mr. Harris. I want
16 to ask you a few questions. Probably more than a few. That
17 won't surprise you, will it?

18 A No.

19 Q You just testified one minute ago that you didn't get any
20 reduction in your sentence because of your cooperation. Do you
21 recall that was the last question Mr. Harding asked you?

22 A Right.

23 Q But in 2003, two state prosecutors went to Judge Byrnes and
24 got you out of jail, didn't they?

25 A Yes.

1 Q You got out early, didn't you?

2 A Sure.

3 Q And I think your testimony was seven to nine months early?

4 A Seven to eight.

5 Q Did you have a release date at that point in time or was
6 that just your guess as to when the State would release you?

7 A More than likely.

8 Q It was more than likely?

9 A Yeah. About seven, eight months.

10 Q But you could have served the rest of that sentence, the
11 whole four years, couldn't you?

12 A No.

13 Q Why not?

14 A Well, there's only so much good time with loss, if I would
15 have went on lock-up or anything. There's a certain amount they
16 couldn't have taken so I wouldn't have done the whole four years.

17 Q Okay. And you know the system pretty well, don't you?

18 A A little bit.

19 Q Well, you've been in a jail most of your adult life, isn't
20 that right?

21 A That's right.

22 Q Do you know how many months in your, let's take it since you
23 were born in, what, 1972?

24 A '70.

25 Q 1970. So you were 18 in 1988, right?

1 A Right.

2 Q Do you know how many months you have been out of jail
3 between 1988 and today?

4 A How many months or years?

5 Q How many years? How many years do you think total?

6 A Maybe, maybe five.

7 Q All right. Five or less, isn't that right?

8 A Maybe five. Yeah, maybe less. I'm not sure.

9 Q Well, I have a record here that I'll show you in a few
10 minute and we can talk about it.

11 A All right.

12 Q So you got out seven or eight months early because the
13 police and prosecutors went to bat for you with Judge Byrnes in
14 October of 2003, correct?

15 A In fact, I didn't even want them to do that.

16 Q You didn't want them to do that?

17 A No. I wanted to finish my sentence before I even attempted
18 to do any of this stuff.

19 Q But they wanted you out so they could put you together with
20 Mr. Harris?

21 A Yeah. That's right.

22 Q And that wasn't your idea?

23 A No. That wasn't my idea. They showed up the second time
24 without even telling me they were coming.

25 Q And the second time being what? When was the first time?

1 A First time is when I talked to Detective Niedermeyer, the
2 initial meeting I had with Tommy Mallin and Detective
3 Niedermeyer, two homicide detectives. The second time they
4 showed up a few weeks later, two to three weeks later. And I
5 asked them what they were doing. They said they were taking me
6 to court because we need you to work for us.

7 Q So the first time was the meeting you described with
8 Detective Mallin, who you said you were pretty tight with?

9 A Yep, that's right.

10 Q He was a South Baltimore narcotics detective, right?

11 A He was.

12 Q And you pretty much lived in South Baltimore and did a lot
13 of crimes in South Baltimore, isn't that right?

14 A From time to time, yes.

15 Q From time to time?

16 A Um-hum.

17 Q And from 1996 on you were in South Baltimore, isn't that
18 true?

19 A From 1988 on.

20 Q Okay. From the 1988 on you were in South Baltimore?

21 A Right.

22 Q And that's where you were committing your crimes?

23 A Um-hum.

24 Q And --

25 THE COURT: Mr. Dobropolski, please say yes or no.

1 A Yes.

2 Q And Detective Mallin got to know you during that time,
3 didn't he?

4 A Yes, he did.

5 Q So you felt you could trust him and that's why you wanted
6 him to be at any meeting?

7 A Yes.

8 Q And if he hadn't been there, you wouldn't have talked, would
9 you?

10 A Probably not.

11 Q Okay. So he and Detective Niedermeyer show up. Where were
12 you housed at the time? Is it Western Correctional Facility?

13 A WCI.

14 Q And where's that?

15 A Cumberland.

16 Q So they drove up to Cumberland, picked you up?

17 A Um-hum.

18 Q Took you where?

19 A State Police barracks.

20 Q In Cumberland?

21 A Yes.

22 Q What time? Do you remember what time they picked you up?

23 A Maybe around, maybe around noon sometime, I'm assuming. I
24 can't really remember.

25 Q Around noon. Did they tell you why they were there or did

1 you know?

2 A I knew.

3 Q Did you know they were coming?

4 A No, I didn't.

5 Q All right. So they took you and they took you from the
6 Western Correctional Facility to the State Police barracks in
7 Cumberland?

8 A Yes, they did.

9 Q Is that about a ten minute ride?

10 A Maybe a little bit longer.

11 Q Okay. 15? 20?

12 A Yeah. I'd go with that. 15, 20.

13 Q And on the ride, did you talk to them?

14 A Excuse me?

15 Q Did you talk to them on the ride?

16 A No. But they were just explaining that they got, got a
17 whole another, judge sent them my letter, that they wanted to
18 talk to me about it. Nothing really to say.

19 Q And did they ask you any questions in the car about what you
20 knew?

21 A Nope.

22 Q So you got to Cumberland and they showed you these photo
23 ID's --

24 A That's right.

25 Q -- that Mr. Harding put in. And you identified each, Mr.

1 Mitchell and Mr. Harris, right?

2 A That's right.

3 Q And on the back you wrote those little things that you wrote
4 that we saw today?

5 A Yeah, that's right.

6 Q Did you actually write that or did the detectives write it?

7 A I wrote it.

8 Q And while you were doing that, you were talking to them,
9 isn't that right? Describing what you knew?

10 A No. They just pretty much asked me to pick the people out.

11 Q Pick what people out?

12 A That I came into contact with concerning this case.

13 Q How did they know what --

14 A That I had information about.

15 Q Without talking to you, how did they know what photos to
16 show you?

17 A Well, they gave me a photo array of six pictures and asked,
18 if I hadn't seen the people --

19 Q If these two people, these two individuals in the courtroom
20 here were among that photo array of six people?

21 A Yes, they were.

22 Q So they already had Mr. Harris's name before you gave it to
23 them?

24 A I wouldn't know that. I had no idea.

25 Q Well, you identified him as one of -- I assume -- strike

1 that. I assume they didn't bring a hundred pictures with them up
2 to Cumberland to question you, did they? They brought six,
3 right?

4 A Yeah. Six for each person, yes, that's correct.

5 Q And among the six was Mr. Harris?

6 A Yes.

7 Q So somehow or another they knew about Mr. Harris before they
8 came to see you, isn't that right?

9 MR. HARDING: Objection.

10 THE COURT: Overruled. You may answer.

11 Q You can answer.

12 A I guess.

13 Q Okay. And then when you identified these pictures, and I
14 think you identified Mr. Harris at 1:05, if I remember the
15 exhibit. And you identified Mr. Mitchell at 1:15. Correct?

16 A I don't know.

17 Q You don't remember? All right. Well, it's in evidence.
18 We'll let the jury decide that. The photos. That's what they
19 say.

20 This is, I believe, your identification of Mr.
21 Mitchell, is that correct? Handled some business for him. Do
22 you see that, sir?

23 A No, I really can't see. I see half of it.

24 Q You can't see? See it now?

25 A Yeah.

1 Q That's Mr. Mitchell, right?

2 A Can I see the front and I'll tell you? Yup. That's Mr.
3 Mitchell.

4 Q And it says that you identified him at 1:15. Can you read
5 that up there or do you want me to turn it over?

6 A I don't know what you're talking about, 1:15.

7 Q Okay. Let's look at the back again. What does it say
8 there?

9 A Oh, 1:15 p.m. Okay. You're talking about the time. All
10 right.

11 Q Okay. And show you -- do you recognize that as the
12 photograph you identified of Mr. Harris?

13 A Yeah.

14 Q And that --

15 A Yes.

16 Q -- says one p.m., does it not? Can you see that?

17 A Yes.

18 Q Where it says time? All right. So by 1:15, you had
19 identified both of them. And then the detectives spoke to you,
20 did they not, about what you knew?

21 A I think that's right.

22 Q And they were taking notes, weren't they?

23 A I really can't remember. It's been like six years.

24 Q You can't remember whether they took notes?

25 A No. I had to write some stuff down.

1 Q You had to write some. What did you have to write down?

2 A What Mr. Harris told me.

3 Q So you wrote that down that day?

4 A I think I wrote something down concerning that. It might
5 have been the back of this. Like I said, it's been like six
6 years.

7 Q So what you wrote may have been what I just showed you?

8 A May have been.

9 Q Well, you're not sure. That's Government's Exhibit MB-39
10 and MB-40. Did you write anything else down?

11 A I'm not sure. It's been six years.

12 Q Did they write anything down?

13 A I'm not sure.

14 Q At some point after you identified these people and after
15 you had some conversations with them, they turned on a recorder,
16 isn't that right?

17 A Yes, they did.

18 Q And then they asked you questions again about what you knew,
19 right?

20 A Um-hum.

21 Q Yes? Is that a yes?

22 A Yes.

23 Q Okay. Your Honor, I might suggest this is a good time --

24 THE COURT: All right.

25 MR. MARTIN: -- to break.

1 THE COURT: Members of the jury, we'll break for lunch
2 at this time. Please leave your note pads on your chairs. Have
3 no discussion about the case during this recess.

4 It's approximately ten after one. I'm going to ask you
5 to be back in the jury room no later than 2:30 p.m. this
6 afternoon.

7 We will be breaking a little earlier this afternoon so
8 we probably will not have an afternoon recess, ladies and
9 gentlemen. But we'll break a little early.

10 Jury is excused until 2:30. We're in recess until
11 2:30.

12 (Luncheon recess at 1:05 p.m.)

13 (Jury not present in courtroom.)

14 THE COURT: Could I have the jury, please?

15 MR. HARDING: Judge, could I ask, Your Honor said
16 before the break you told the jury we were going to break early
17 today.

18 THE COURT: Yeah. I didn't realize that Mr. Martin
19 needed to leave by 20 of 4?

20 MR. MARTIN: That's correct, Your Honor.

21 MR. HARDING: There was some discussion --

22 MR. MARTIN: I think I said a quarter to four the other
23 day.

24 THE COURT: Quarter to four. I thought it was on the
25 other side of 4:00.

1 MR. HARDING: Okay. There was some discussion last
2 weak of Mr. Martin leaving but us not suspending the proceedings
3 because of that, because Mr. Harris --

4 THE COURT: There was that discussion. And I take it,
5 Mr. Martin, if you've concluded your cross -- well, he wants to
6 be here for the other cross.

7 MR. MARTIN: I would prefer to be here for the other
8 cross, Your Honor.

9 THE COURT: All right. Well, we may make it. Let's
10 see how it goes.

11 MR. HARDING: Should we let our other witness go for
12 the evening?

13 THE COURT: No. Hold on to him for now. I will say,
14 for the record, obviously, I haven't heard the cross examinations
15 yet. But nothing that I heard during the direct examination
16 calls into question the Court's earlier ruling with respect to
17 Rule 801. And I'll be alert to any need to modify that ruling as
18 we go forward.

19 MR. HARDING: Judge, I will, before the jury gets here,
20 I will object to simply displaying something that's not in
21 evidence, which is quite clearly not even an official document.

22 THE COURT: Okay. Mr. Martin, you can just read those
23 dates to the witness.

24 MR. MARTIN: Your Honor, there's s lot of them. I will
25 read them that way. I will suggest to the Court, tell the Court

1 that I have, if I have to subpoena everybody for the backup for
2 this sheet that I have, I will do that if I have to. They are
3 official records we obtained by subpoena pretrial, or we got them
4 off the Internet. They're records of Mr. Dobropolski's
5 institutional movement since he's been incarcerated, for the
6 first time on February 7th, 1989.

7 THE COURT: Okay. Well, don't show the document to the
8 witness, just read the dates.

9 (Jury enters the courtroom.)

10 THE COURT: Good afternoon, ladies and gentlemen.
11 Whenever you're ready, Mr. Martin.

12 BY MR. MARTIN:

13 Q Thank you, Your Honor. Good afternoon, Mr. Dobropolski.

14 A Good afternoon.

15 Q Mr. Dobropolski, is it fair to say that your first adult
16 conviction occurred in 1989?

17 A '89 or '88.

18 Q '89 or '88. What was that for, do you remember?

19 A Auto theft.

20 Q Pardon me?

21 A Auto theft.

22 Q Okay. And were you locked up for that?

23 A I was released on bail and given probation before judgment.

24 Q So if you were locked up, it was only for a few days?

25 A A few hours.

1 Q A few hours. All right. And then, do you remember what
2 your second conviction was?

3 A Auto theft, I think.

4 Q And that was in December of '89?

5 A I think so. I believe so.

6 Q And you were sent to Volunteers of America?

7 A No.

8 Q It's a halfway house, isn't it?

9 A The first sentence was for auto theft.

10 Q Pardon me?

11 THE COURT: Please keep your voice up, Mr. Dobropolski.

12 A First sentence was for auto theft.

13 Q The first sentence. And were you placed at the Volunteers
14 of America to serve your sentence, a work release type sentence?

15 A No. I was being detained there. Not --

16 Q So you were detained pending trial?

17 A Right. And it wasn't for auto theft. That was for a charge
18 that was dismissed.

19 Q Okay. But you were detained there and you escaped from
20 there, did you not?

21 A Yeah, I left.

22 Q You left?

23 A Yes.

24 Q They called it an escape, though, didn't they?

25 A Yeah. They do that now.

1 Q You don't think they should be doing that?

2 A If you can walk out, it shouldn't be an escape.

3 Q Even if you're not authorized to walk out?

4 A I'm not going to get into semantics. That's how it fits.

5 Q And after you walked out, you were incarcerated again in the
6 Baltimore City Detention Center, right?

7 A Right.

8 Q And then that charge was then dismissed about a month later?

9 A Um-hum. Yes.

10 Q Okay. And then in June of 1990, you were again in the
11 Baltimore City Detention Center. Do you remember that?

12 A No, but I take your word for it.

13 Q And what was that for?

14 A I have no idea.

15 MR. HARDING: Judge, I object.

16 THE COURT: Sustained.

17 BY MR. MARTIN:

18 Q Were you convicted of a crime -- what was the second crime
19 you were convicted of, Mr. Dobropolski?

20 A I don't know.

21 Q What are our choices?

22 A I have no idea.

23 Q Carjacking?

24 A Carjacking? Where do you get that from? That's not on my
25 record.

1 Q Auto theft?

2 A Is that what's on my record? I mean, you have it in front
3 of you, right?

4 Q I have your detention institutional movement record in front
5 of me. Someone else has those other records and they'll go
6 through them with you. But do you recall?

7 A No, I don't.

8 Q Okay. You told me this morning, did you not, that, I guess
9 it was probably this afternoon, even, that you probably haven't
10 been out of jail more than a total of five years?

11 A Yeah. Yes.

12 Q Since 1989 or '88?

13 A '88, that's right.

14 Q And when you were out of jail, you were on the street in
15 South Baltimore committing crimes, is that right?

16 A I didn't say I was out there committing crimes. I was in
17 South Baltimore. Some of them happened in South Baltimore, some
18 of them didn't.

19 Q Where did the other ones happen?

20 A Wherever.

21 Q Wherever?

22 A Yeah.

23 Q You were living in South Baltimore at the time, weren't you?

24 A Yeah. More than likely, yeah.

25 Q More than likely from '88 until now, when you were out on

1 the street, you were living in South Baltimore?

2 A Right.

3 Q Okay. You heard the rap song that, I guess it was not the
4 song, but the rap lyrics that were read to you this morning by
5 Mr. Harding?

6 A Yes.

7 Q And you told the jury, I think, that Mr. Harris was the one
8 who wrote those rap lyrics while he was in prison with you?

9 A In Central Booking.

10 Q In Central Booking. All right. So you actually saw him
11 writing these things?

12 A Yes.

13 Q And as he wrote them, he sang them to you, serenaded you
14 with them?

15 A He wasn't serenading me with them. But yeah, he was letting
16 me hear what he was writing, that's right.

17 Q Did he sing you to sleep with them?

18 A No. He usually went to sleep before I did.

19 Q So this was during your waking hours?

20 A That's right.

21 Q Did he perform for you?

22 A No. He used to rap on the tier and stuff for other inmates.

23 Q But he didn't perform for you in the cell?

24 A He would let me hear what he wrote. No, but it wasn't like
25 an all out performance.

1 Q And in particular, you remember the one that you read this
2 morning about cracking or busting spines, was it?

3 A That's right.

4 Q And is that actually what you did, you told him you did?

5 A No. That was his idea. That's what he came up with.

6 Q You told him you beat people up?

7 A Oh. That's what he heard about me, yeah. And I'm sure I
8 told him I beat people up, too, yeah.

9 Q And you did beat people up, didn't you?

10 A I had. I have an extensive assault record.

11 Q And you did that when you were in South Baltimore, didn't
12 you?

13 A South Baltimore, yeah.

14 Q Now, you mentioned some names that Mr. Harris gave to you
15 when you were having these conversations with him in, I believe,
16 is it September of 2002 when you were both locked up together,
17 roommates for two weeks?

18 A August, 2002. August or September, yeah.

19 Q So it was the end of August and into September, correct?

20 A Probably.

21 Q Okay. And you mentioned the name Jules Collins?

22 A Yeah. Julius.

23 Q Who is Julius Collins?

24 A Dude I sort of grew up with, in prison with. Got a serious
25 reputation of being a killer.

1 Q A dude you grew up with, in prison with?

2 A Yep.

3 Q So you met Julius Collins, Jules Collins in -- is it Jules
4 or Julius?

5 A Julius.

6 Q You met Julius Collins in prison?

7 A That's right.

8 Q So you grew up with him in prison?

9 A Yeah.

10 Q Because that's pretty much where you grew up, isn't it, in
11 prison?

12 A No, not really.

13 Q Well, since you were 18?

14 A Yeah.

15 Q Now, Julius Collins, how old is he?

16 A Mid thirties.

17 Q Mid thirties?

18 A Yeah.

19 Q And where was he from?

20 A Northwest Baltimore.

21 Q Northwest Baltimore. Where in Northwest Baltimore?

22 A Woodland Avenue.

23 Q Woodland Avenue. Okay. How about Stover Stockton? Who is
24 he?

25 A Just names I heard in general out in the Park Heights area.

1 I don't know him.

2 Q Somebody you didn't know?

3 A No.

4 Q You don't have any idea how old he is or anything else, do
5 you?

6 A Nope, wouldn't be able to tell you.

7 Q Pardon me?

8 A Nope.

9 Q This person Lex, who is that?

10 A I think one of Stover's codefendants.

11 Q Do you know him?

12 A Nope.

13 Q Just somebody you heard of?

14 A That's right. All related to the Park Heights area.

15 Q And as you would call it, a serious dude?

16 A Serious dude.

17 Q Okay. But you don't know him? You never met him?

18 A Nope.

19 Q Don't have any idea how old he is, do you?

20 A Nope.

21 Q And you told us this morning that when Mr. Harris spoke with
22 you, he told you that the murder in Mr. Rahman's car, that it was
23 about, a rap music dispute over money? Isn't that what you told
24 us this morning?

25 A Yeah. It was like in general. It was never really

1 pinpointed. He was telling me about, more or less about the
2 murders that he committed.

3 Q And he was telling you that this particular murder was about
4 a rap music dispute over money, isn't that right? Yes or no?

5 A Yes.

6 Q Let me ask you about the letter that you wrote to Judge
7 Byrnes in April of '03, the one that you read this morning.

8 A Sure.

9 Q Do you recall that?

10 A Yes.

11 Q It's true, isn't it, Mr. Dobropolski, that what you were
12 doing was dangling this information that you had about this
13 double murder and saying you won't speak with the police while
14 incarcerated, right?

15 A That's right.

16 Q So your purpose in writing the letter was to let whoever was
17 going to read it know, I got this information, but unless I get
18 out I am not going to tell anybody what it is, isn't that right?

19 A No. That's not correct.

20 Q That's not?

21 A Because I didn't even want to talk to him until I was
22 released.

23 Q But that's what you wrote, isn't it?

24 A That's right. Now I deal with the rest of the stuff when I
25 get released from prison. I didn't ask them to take me to court.

1 Q But you did write that to Judge Byrnes, saying, unless I get
2 out, I'm not going to give anybody this information, didn't you?

3 A I don't think I put it like that, unless you see it written
4 like that, word for word.

5 Q Let me show you.

6 A Unless I get out --

7 THE COURT: Just wait, wait for the question, Mr.
8 Dobropolski.

9 Q And do you see that sentence that begins "however?" It's
10 highlighted.

11 A Yep.

12 Q However, and I am firm about this, I will not and cannot
13 work with or speak with officers while I am incarcerated,
14 correct?

15 A That's right.

16 Q So a condition of your telling them anything was that you
17 had to get out of jail, right?

18 A That was their idea. It wasn't mine.

19 Q Well, you wrote this letter before anybody knew about you,
20 didn't you?

21 A Yeah. But that was the detective's idea. It wasn't mine.
22 I don't want to deal with this while I was incarcerated.
23 Expected to wait eight months and come home --

24 Q When you wrote this letter --

25 A I mean, how many I got in.

1 Q Let me put it in front of you again, please. When you wrote
2 this letter, the detectives didn't even know about you, did they?

3 A No, they didn't.

4 Q And you wrote, I will not and cannot work with or speak with
5 officers while I am incarcerated, didn't you?

6 A Um-hum. Yeah. But then -- all right.

7 Q You want me to leave it up there? I'm sorry.

8 A Yeah. If you come down a little bit further, I said,
9 because it will actually put me in some kind of danger. I put
10 that there. Could get me killed.

11 Q I understand. But you said, I'm not going to tell you
12 anything unless I get out of jail?

13 A You can probably highlight whatever you want and say what
14 you want, but if you read the whole letter you'll understand what
15 I was talking about.

16 Q We've seen the whole letter.

17 A Yeah, I've seen it. I wrote it.

18 Q And you asked the judge if he would consider modifying your
19 sentence, didn't you?

20 A Modify my sentence?

21 Q And you say, that way, didn't you, at the end of that
22 sentence? Modify my sentence, that way?

23 A That's the only way I will be able to -- can you turn this
24 over? There's another page, right?

25 Q Sure. Go ahead. I'll put it up for you. That way to work

1 with law enforcement. Correct?

2 A That's it.

3 Q But you say -- let me put it back up again just so we get
4 the whole thing. Would you consider modifying my sentence that
5 way? That's the only way I'll be able to work with law
6 enforcement. Correct?

7 A That's right.

8 Q In other words, I can't work with law enforcement unless I
9 get out?

10 A Yeah, I can't do it from my prison cell, that's right.

11 Q All right. And you said this morning, did you not, that you
12 didn't want to get out? You wanted to serve the rest of your
13 sentence? Didn't you?

14 A Finish the last eight months, that's correct. I wanted to
15 finish the last eight months. I would have did this when I got
16 released.

17 Q So you didn't want Judge Byrnes to let you out. You wanted
18 to wait and then work with law enforcement after you got out?

19 A That's right.

20 Q You wanted Judge Byrnes, you say in this letter, modifying
21 my sentence.

22 A He wouldn't have had to modify my sentence. I still would
23 have did it. They still would be sitting right over there.

24 Q Well, you did modify your sentence to the point where you
25 got out, as you said this morning, at least eight months earlier,

1 right?

2 A Yeah.

3 Q And at the end of this letter you have what I guess we could
4 call a postscript. You say, the information I have? See that?
5 It's about a double murder that took place in Northwest Baltimore
6 in the Park Heights area, correct?

7 A Yup.

8 Q All right. So you told the police that it was in Park
9 Heights. You told the police that it was a male and female that
10 were shot in the head?

11 A That's right.

12 Q You told the police that the car drifted?

13 A Um-hum.

14 Q Correct?

15 A That's right.

16 Q Now, at that point in time you didn't name the victim, did
17 you?

18 A No, I didn't.

19 Q You didn't know the victim's name at that point, did you?

20 A No, I didn't. That's right.

21 Q Now, Mr. Harding didn't show you, but I want to show you
22 this letter. You wrote a second letter to Judge Byrnes, didn't
23 you?

24 A That's right.

25 Q Because you didn't get any response to your first letter,

1 huh?

2 A That's right.

3 Q Now, before you began your prison sentence or about the same
4 time you began this prison sentence of Judge Byrnes, was that a
5 violation of probation that put you back in jail in '02?

6 A Violation of court order. It wasn't a violation of
7 probation.

8 Q Right. The court order was that you go to Second Genesis,
9 right?

10 A Right. And I left.

11 Q And you walked away from Second Genesis?

12 A Yes.

13 Q And when your probation officer and Judge Byrnes found out
14 about it, they called you in and he gave you a sentence, right?

15 A I didn't have a probation officer at the time. I was
16 released from prison to Second Genesis, violated the court order,
17 went back in front of Judge Byrnes. I didn't have a probation
18 officer.

19 Q All right. So you were back in front of Judge Byrnes and he
20 incarcerated you?

21 A That's right.

22 Q And what was the sentence that he gave you?

23 A The original sentence was eight years.

24 Q Eight years?

25 A That's right.

1 Q So in '02, in September or August of '02 you go back in to
2 serve that eight year sentence, correct?

3 A Go back to finish it, yes.

4 Q To finish it. How much time had you served on that
5 sentence?

6 A I started '99. I started in July of '99.

7 Q Okay. And at some point you served a certain amount of
8 time, then you went to Second Genesis?

9 A Yes.

10 Q When you walked away from Second Genesis, Judge Byrnes
11 called you in and he then sentenced you to the remainder of your
12 sentence?

13 A Yes.

14 Q Which was a total of 8 years, less whatever you had served,
15 right?

16 A Yes.

17 Q And so you're in front of Judge Byrnes. He sentences you.
18 And you had a lawyer at the time, right?

19 A I don't know. I don't know if I had a lawyer. I think I
20 had a Public Defender.

21 Q All right. And that lawyer filed a motion to reduce your
22 sentence, right?

23 A I did have a lawyer. Timothy Knepp.

24 Q And he filed a motion with Judge Byrnes to reduce that
25 sentence that he just sent you away on, isn't that right?

1 A He might have. I'm not sure.

2 Q And do you recall if Judge Byrnes agreed, you agreed with
3 the Court that he would wait one year to rule on that motion?

4 A I don't know.

5 Q Let me -- do you recall a letter that you wrote to Judge
6 Byrnes? Your Honor, would you prefer I showed this to the
7 witness rather than put it on the screen?

8 THE COURT: I don't think there's going to be any
9 objection.

10 Q Do you recall that letter that you wrote to Judge Byrnes on
11 September 7th, 2003? I can put that on the screen. Is that your
12 handwriting?

13 A Yes, it is.

14 Q What's the first sentence there after "dear sir?" What does
15 it say?

16 A Dear Sir: Concerning the motion for --

17 THE COURT: Slowly. Slowly, please, Mr. Dobropolski.

18 THE WITNESS: Dear Sir: Concerning the motion for
19 modification and/or reduction of sentence which was agreed to be
20 held sub curia for a period of one year, September, 2002 through
21 September, 2003, in advance I would like to respectfully submit
22 several issues for your consideration, as well as the prosecutors
23 in my case.

24 BY MR. MARTIN:

25 Q Does that refresh your recollection as to whether you had

1 filed a motion for reduction of sentence and that the judge had
2 decided that they would wait one year before he ruled on it?

3 A Yeah. I had Mr. Knepp representing me, but I also had a
4 Public Defender, too. I was getting confused.

5 Q That's okay. But that does refresh your recollection now,
6 correct?

7 A Right. And I wrote this letter, too.

8 Q So in the beginning of September, 2002, you knew that you
9 had one year before Judge Byrnes would even consider letting you
10 out, right?

11 A Right.

12 Q Okay. Now, you went to prison and you were put in the same
13 cell. You went to, I guess it wasn't prison. Was it the
14 Baltimore City Jail? Where did you go when Judge Byrnes sent you
15 away that time? Where did you meet Mr. Harris?

16 A Central Booking.

17 Q Okay. So you went to Central Booking. Mr. Harris was there
18 in Central Booking, right?

19 A That's right.

20 Q You guys became cell mates?

21 A Yes.

22 Q And at that point in time, as we have just seen, you knew
23 that you had one year to come up with something for the judge to
24 consider letting you out, didn't you?

25 A Nope.

1 Q You didn't?

2 A Nope.

3 Q You did know you had a year before the judge would consider
4 your motion, though, didn't you?

5 A At that time I wasn't even going out to Baltimore County. I
6 never even appeared in front of the judge yet.

7 Q Doesn't the letter say, concerning the motion for
8 modification that you agreed to hold sub curia for a period of
9 one year?

10 A Um-hum.

11 Q Isn't that what it says?

12 A Yeah. But if you look at the date that I went to court,
13 you'll see that was after I met Shelton.

14 Q What's the date you went to court on there?

15 A I don't know. It was after I got out of City Jail.

16 Q You wrote the letter on 9/7/03?

17 A That's right. And I met Shelton in '02.

18 Q It's 9/7. And at one point, you wrote an earlier letter in
19 May of '03?

20 A I met Shelton in '02.

21 Q You wrote a letter in May of '03 and another letter in
22 September of '03, correct?

23 A Right. I met Shelton in '02.

24 Q When you went to jail a year earlier, you knew that the
25 judge was going to wait one year to rule?

1 A No, I didn't.

2 Q That's what you wrote in your letter here, didn't you?

3 A Listen to me. I had yet, I didn't go up in front of this
4 judge until September of '03.

5 Q I understand.

6 A I met Shelton in August of, of '02.

7 Q We all understand that.

8 A So I wouldn't have known that.

9 Q You met Mr. Harris at the end of August in '02?

10 MR. HARDING: Could I ask that Mr. Martin let the
11 witness finish answering his questions? He's being interrupted.

12 THE COURT: Mr. Dobropolski, if you need to finish your
13 answer, you'll be permitted to finish your answer. Go ahead, Mr.
14 Martin.

15 THE WITNESS: All right.

16 BY MR. MARTIN:

17 Q You met Mr. Harris at the end of August in '02. That's what
18 you just told us, correct?

19 A That's right.

20 Q And in this letter, you write in September of '03, one year
21 later, that the judge had agreed, you agreed that he would hold
22 it sub curia for one year?

23 A That's right.

24 Q And you knew that when you went to jail in '02, in
25 September -- August, late August, early September of '02, you

1 knew, didn't you?

2 A No, I didn't, and I'll explain why. Because I met Shelton.
3 I got my charges taken care of in Baltimore City. And then they
4 transferred me to Baltimore County the following month when I
5 went in front of the judge. And then he said the stipulation for
6 the one year sub curia. I didn't know about that in advance to
7 meeting Mr. Shelton.

8 Q Okay. And in '03, September of '03, first in May of '03 and
9 then September of '03, you knew that your time for going back
10 before Judge Byrnes was coming up, didn't you?

11 A I mean, it's not a definite thing he's going to bring me
12 back up.

13 Q Well, you knew that it agreed to be held in abeyance for one
14 year, correct?

15 A Doesn't mean he has to bring me back to court.

16 Q I understand that. But you knew that the time period of one
17 year was going to expire a year from when you were in front of
18 Judge Byrnes, didn't you?

19 A Wouldn't expire. He can hold it up to 18 months, five
20 years. I can go out the door --

21 Q But you knew you could -- I'm sorry. Did I interrupt you?
22 Did you finish your answer?

23 A No, go ahead.

24 Q You knew that he wasn't going to hear you before at least
25 one year was gone, correct?

1 A Okay.

2 Q You agree with that? Say yes or no.

3 A Yeah.

4 Q Okay. Now, this morning you testified as to why you held on
5 to this information for a period of eight months, I think Mr.
6 Harding said. Is that right?

7 A Right.

8 Q So you learned of it in the fall of 2002 and you didn't do
9 anything until May of 2003, right?

10 A Right.

11 Q And you said that you, I think you told the grand jury, you
12 recall saying you wanted to, quote, "do something right", close
13 quote?

14 A Exactly.

15 Q And you didn't want to have it on your conscience if
16 anything happened because you hadn't brought the information
17 forward, correct?

18 A That's right.

19 Q And, of course, that's why you waited eight months to tell
20 everybody about it, isn't it?

21 A No. It was the taller thing to do.

22 Q You waited eight months to tell everybody about it because
23 you were a criminal at heart and you didn't want to report on
24 other criminals?

25 MR. HARDING: Your Honor, again, the witness was

1 interrupted.

2 A Yeah, if that's what you want to say.

3 MR. MARTIN: I thought he'd finished, Your Honor.

4 THE COURT: Go ahead, Mr. Martin.

5 BY MR. MARTIN:

6 Q You waited eight months, I think you said this morning,
7 because of this code of criminals? You didn't want to talk about
8 another criminal, is that right?

9 A That's right.

10 Q So despite your feelings that you wanted to do something
11 right, and despite your feelings that you didn't want to have it
12 on your conscience, you thought it was okay to wait eight months?

13 A Took me a long time to figure out what I was going to do
14 with that.

15 Q All right. And what you were going to do with it is go to
16 Judge Byrnes and get your sentence cut, isn't that right?

17 A I mean, that's what you want to say. I already told you why
18 I did it. I mean, I didn't gain anything from this, and I damn
19 sure didn't feel like doing this.

20 Q When you went before Judge Byrnes in October, 2003, he let
21 you out that day, didn't he?

22 A Yeah. So I can work with homicide detectives. You think
23 it's easy?

24 Q Well, that's what you said you wanted to do, isn't it?

25 A Yeah. I didn't know what I was getting into, trust me.

1 Q Well, that's what you said you wanted to do, isn't it?

2 A Yeah.

3 Q I mean, isn't that this letter?

4 A Um-hum.

5 Q Because of the serious nature, one of my primary goals,
6 which is to offer my assistance to law enforcement as an
7 informant?

8 A That's right.

9 Q That was your, that was one of your primary goals when you
10 wrote this letter in September of '03 to Judge Byrnes, wasn't it?

11 A That's correct.

12 Q Okay. Now, you were offering to be an informant in a number
13 of areas. Do you remember that?

14 A Yes, I was.

15 Q And one of them was illegal firearms?

16 A Illegal firearms?

17 Q Yeah. Did you offer to be an informant in illegal firearms?
18 You did, didn't you?

19 A Yeah, exactly.

20 Q So you knew about illegal firearms, didn't you?

21 A Sure do.

22 Q And you offered to be an informant on drug matters?

23 A That's right.

24 Q And out of state narcotics contributions to Maryland?

25 A That's right.

1 Q And local and state narcotics distribution, correct?

2 A That's correct.

3 Q And high-powered illegal firearms?

4 A Yep.

5 Q Which you knew about?

6 A Um-hum.

7 Q Because of your career in crime, correct?

8 A Right.

9 Q And because of your time in prison, correct?

10 A Right.

11 Q Okay. Illegal gambling something else you knew about?

12 A A little bit.

13 Q And you offered your help to authorities with illegal
14 gambling, didn't you?

15 A That's right.

16 Q And businesses used to filter illegal money?

17 A Yup.

18 Q And you knew about that from your career in crime, is that
19 right?

20 A Sure.

21 Q And possible information about homicides, correct?

22 A That's correct.

23 Q And you told Judge Byrnes again in this second letter,
24 didn't you, that under any circumstances you will not be
25 interviewed by law enforcement while you're incarcerated,

1 correct?

2 A That's right.

3 Q But you said you would sign an agreement with the court as a
4 condition of your release to work with and supply information
5 regarding these above areas, the illegal firearms to gambling and
6 all of that. Do you recall that?

7 A Right.

8 Q So you were asking Judge Byrnes to let me out of jail and
9 I'll work with the police on all these things, correct?

10 A Yup.

11 Q You also said that Officer Mallin was the only one you would
12 talk to or at least he had to be there when you talked?

13 A Yup.

14 Q Because you trusted him, right?

15 A Still do.

16 Q So again, for the second time, you've told Judge Byrnes no
17 interview while still incarcerated, correct?

18 A That's right.

19 Q Okay. And do you recall telling Judge Byrnes that your
20 problem in life has been what Judge Byrnes had earlier identified
21 as your failure to take responsibility for your own actions?

22 A Yup.

23 Q But you said you told Judge Byrnes you had changed, isn't
24 that right?

25 A Exactly.

1 Q And you said you were now ready to be responsible for what
2 you do, correct?

3 A That's it.

4 Q And that was in September of '03, correct?

5 A Okay.

6 Q And do you recall telling Judge Byrnes that one of the
7 things for you on the responsibility issue was that you, you
8 weren't, you were going to do more than just stop committing
9 crimes and moving away from your friends who were getting you in
10 trouble, but you were going to offer to law enforcement your
11 complete cooperation and give them information about the strong
12 incidence of criminal element in a section of Baltimore City,
13 South Baltimore, to assist law enforcement in increasing the
14 quality of life in that community. Do you remember writing that?

15 A Yup.

16 Q So what you were saying was, I know a lot about crime in
17 South Baltimore and I'm willing to help everybody out so we can
18 clean that community up, isn't that right?

19 A I was saying I was done with crime. I was done seeing it
20 tearing my neighborhood up. You can put it how you want to put
21 it.

22 Q Well, I'm putting it the way you put it. Am I not?

23 A No, you're putting it you --

24 Q Let me show you the letter.

25 A I've already seen it. I wrote it.

1 Q You see this? Means using a 20 year criminal background.

2 A That's right.

3 Q Information ties and a strong influence of the criminal
4 element in a section of Baltimore City, South Baltimore, to
5 assist law enforcement in increasing the quality of life in that
6 community, in a community that desperately needs it, correct?

7 A Yep.

8 Q So that's what you were offering when you wrote Judge Byrnes
9 on September 7th, correct?

10 A Yes, I was.

11 Q And at that time the detectives, Detective Mallin and
12 Detective Niedermeyer, hadn't yet come to see you, correct?

13 A No. I don't think so.

14 Q Well, they came to see you in October. You wrote this
15 letter on September 7th.

16 A Right.

17 Q Is that right? I mean, if you think -- I'm not trying to
18 trick you. Trust me. But if you think I am, just say so and
19 we'll show you the documents. All right?

20 Now, even when you went to court on October, was it
21 October 15th? Is that what you recall? Somewhere around there?
22 They came and got you and said, we're going to court, right?

23 A Second time.

24 Q Right. And you didn't know about it?

25 A You're right.

1 Q And they took you to Judge Byrnes. And Judge Byrnes agreed,
2 after the prosecutors talked to him, to let you out, correct?

3 A Yep.

4 Q And the condition that he put on letting you out was that
5 you had to cooperate with the police?

6 A That's right.

7 Q And did you tell the jury this morning that you didn't want
8 to do that at that point?

9 A I didn't want to do it beforehand.

10 Q Now, when you were interviewed by Detective Mallin and
11 Detective Niedermeyer, the date of that interview was October
12 2nd, 2003. Do you see that at the top here?

13 A Um-hum.

14 Q By the time of that interview you had already written two
15 letters describing what you wanted to do and briefly describing
16 the information that you had, is that right?

17 A Right.

18 Q But you didn't tell them any names because you didn't know
19 any names at that point, did you?

20 A That's right.

21 Q I mean, you knew who you spoke to in prison but you didn't
22 know the names of the victims, did you?

23 A No.

24 Q Okay. Now, and on October 3rd, you spoke for a period of
25 time with Detectives Niedermeyer and Mallin, correct?

1 A Right.

2 Q And at that point, you testified already this morning you
3 identified these photo spreads? You picked out Mr. Harris and
4 Mr. Mitchell, correct?

5 A Right.

6 Q And did you say they had six other spreads that they showed
7 you, or four other?

8 A It was six on each page.

9 Q But there were only two pages?

10 A Photo arrays, yeah.

11 Q All right. So there were six on one page and six on
12 another?

13 A Um-hum.

14 Q So the only two photo arrays they showed you were of Mr.
15 Harris and Mr. Mitchell on that day?

16 A Yeah. I mean, it was 12 photos.

17 Q Right. Is that correct? Is that true, then? The only
18 photo arrays they showed you were the ones that Mr. Harding put
19 into evidence this morning?

20 A Right.

21 Q Okay. And you hadn't talked to them yet at that point, had
22 you?

23 A No.

24 Q Now, when you talked to them, you'd told them all the
25 details that you had, didn't you?

1 A Yup.

2 Q And did you tell them that Mr. Harris and Mr. Mitchell had
3 tried to recruit you to do crimes?

4 A Yup.

5 Q And you told them that on October 2nd?

6 A I don't know if I told them on October 2nd. I think I
7 discussed that with Mr. Harding, too.

8 Q Well, we'll get do that. But you don't know whether you
9 told them on October 2nd, correct? Now, you know there's a
10 transcript of that?

11 MR. HARDING: Objection, Your Honor. The witness never
12 answered the previous question.

13 Q I'm sorry.

14 THE COURT: Go ahead, Mr. Martin. There's no question
15 right now. Go ahead, Mr. Martin.

16 BY MR. MARTIN:

17 Q You gave them the details that you had, correct?

18 A Right.

19 Q And at that point in time, do you recall if you told them
20 that Mr. Mitchell and Mr. Harris tried to recruit you to do
21 crimes with them?

22 A I may have.

23 Q The record would reflect best what you did; do you agree
24 with that?

25 A If that's what I did, that's what I did. If you got it on

1 record, yeah, I'll go with that.

2 Q And your interview with them was taped, correct?

3 A Yeah.

4 Q But everything you said to them that day wasn't taped, was
5 it?

6 A Like what?

7 Q There was nothing taped when they showed the photo spreads
8 of the two individuals, was there?

9 A I don't know. I don't know really when they turned it on
10 and when they turned it off.

11 Q There was a time -- so you don't know when they turned it on
12 and when they turned it off?

13 A Nope.

14 Q Speaking of turning it on and turning it off, the device
15 that Detective Giganti fitted you with when you taped Mr.
16 Harris --

17 A That's right.

18 Q -- had an off and on button on it, didn't it?

19 A I don't know.

20 Q You don't know?

21 A Nope.

22 Q Now, you had conversations with Mr. Harris while you were
23 cell mates together for a period of about two weeks?

24 A That's right.

25 Q And it was a process of you getting to know him and him

1 getting to know you, right?

2 A Yep.

3 Q And during that time period, do you recall describing what
4 you were doing was extracting information from Mr. Harris?

5 A Not really. We were just talking in general.

6 Q Let me -- bear with me a second, Your Honor.

7 THE COURT: Yes.

8 Q Do you remember telling Mr. Harding this morning about you
9 testifying in the grand jury on November 19th, 2003?

10 A Yes.

11 Q Do you remember being asked at Page 13, Mr. Harding, Line
12 23: Question: So what was it -- Your Honor, would you prefer I
13 show this to him or just read it?

14 THE COURT: I don't think there will be any objection.
15 But you can put it on --

16 Q I would just as soon read it and I can put it up here.

17 THE COURT: All right.

18 Q That way everybody can see it.

19 Line 23. So what was it you talked about when you met
20 Bo and how did you meet him? And your answer was: I met him
21 through Shelvin. Shelvin introduced him to me. Things we would
22 talk about were criminal activity we would probably do when we
23 got out, as far as setting up drug dealers, robbing drug dealers,
24 selling drugs. They wanted, I think they wanted me to be sort of
25 an enforcer for them maybe, for protection, things of that

1 nature. Do you recall that?

2 A Yep.

3 Q Now, do you recall when you were interviewed by Detectives
4 Mallin and Niedermeyer that you told them, and again, Your Honor,
5 I'll put this on the screen. First full paragraph.

6 Like I said this went, information I got was like sort
7 of distracted over like probably a two week period. You meant to
8 say extracted, didn't you?

9 MR. HARDING: Objection.

10 THE COURT: Overruled. You may answer.

11 A I guess.

12 Q And you said it was like probably over a two week period.
13 It was just like me and him BS'ing, right? That's what you said,
14 right?

15 A Where's it at?

16 Q Same paragraph, right below it. Just like me and him
17 BS'ing. It's B-S-I-N-G. See it, fourth line down? Left-hand
18 side. There.

19 A Oh, I got it.

20 Q So you guys were just chatting, right?

21 A Um-hum.

22 Q And then shooting the bull and passing the time of day
23 yourself, correct?

24 A That's it.

25 Q Okay. So that's what you describe as BS'ing, correct?

1 A Yep.

2 Q And you were in the process of extracting this information
3 from Mr. Harris, correct?

4 A No, he kind of came out with it.

5 Q He kind of came out with it?

6 A Um-hum.

7 Q Okay.

8 THE COURT: Please say yes or no, Mr. Dobropolski.

9 Q Your answer was he kind of came out with it?

10 A Yes.

11 Q And your answer is yes, correct?

12 A Yes.

13 Q Okay. And what you had to do with Mr. Harris in order to
14 get this information was establish, if you will, your street
15 credentials with him?

16 A No. I wasn't trying to get information. He just came out
17 with it.

18 Q Well, he just came out with it. So what were you trying to
19 do, then?

20 A I wasn't trying to do anything. I thought he was a pretty
21 decent dude, to be honest with you.

22 Q So he just came out with it then?

23 A Yep.

24 Q And were you surprised when he came out with it?

25 A Yeah, I was a little surprised.

1 Q And you testified, did you not, that the reason he came out
2 with it was that you had gained his confidence?

3 A Excuse me?

4 Q You testified, did you not, that the reason you believe he
5 came out with it was that you had gained his confidence?

6 MR. HARDING: Objection.

7 THE COURT: Overruled. You may answer.

8 A I'm not sure.

9 Q You're not sure if you testified that way or you're not sure
10 that's what happened?

11 A That's how I meant -- go ahead. Did I say that? That's my
12 testimony? I gained his confidence?

13 Q I thought that's what you said but if you don't remember it,
14 that's fine.

15 A I'm not sure.

16 Q Did you gain his confidence, do you think?

17 A I wasn't trying to gain his confidence. We were talking
18 about criminal activities.

19 Q And you talked about, did you not, where we, you and he,
20 grew up?

21 A Right.

22 Q Now, when he was in Park Heights, you weren't even there any
23 more, were you?

24 A No. I'm a little bit older than that.

25 Q And we talked already about these similar acquaintances you

1 had?

2 A Right.

3 Q Only you've testified that you didn't know three of those
4 people, correct?

5 A Yeah. Neither did he, I don't think.

6 Q Neither did he?

7 A Just knew the names, yeah.

8 Q Okay. And your reputation?

9 A My reputation?

10 Q Right. You said he knew about it when you got to prison, he
11 already knew about your reputation?

12 A Yeah. There were people on the tier that were talking about
13 me.

14 Q People on the tier. And how did the people on the tier know
15 about your reputation?

16 A Friends.

17 Q Do you know?

18 A Friends. South Baltimore people.

19 Q So your reputation was a South Baltimore tough guy?

20 A Right.

21 Q Okay. And you testified, actually, in the statement you
22 gave the detectives, you said that, quote, "they believed that
23 you were an enforcer for drug dealers?"

24 A Right.

25 Q Who is "they"? The people on the tier?

1 A I don't know. I don't know who we're referring to when I
2 was talking to the detectives. I have no clue.

3 Q I'm sorry. I didn't catch that last part of your answer.

4 A I don't know.

5 Q What did you do to make them, whoever they are, believe that
6 you were an enforcer for drug dealers?

7 A Who is they?

8 Q I asked you who they is because that was your statement,
9 they.

10 A I can't remember what the conversation --

11 Q Let me try.

12 A What we're talking about, yeah.

13 Q Let me try to pin it down. Were you referring to Mr. Harris
14 and Mr. Mitchell?

15 A I don't know. We're talking to detectives. So I might have
16 been talking about them.

17 Q Might have been talking about who? Mr. Harris and Mr.
18 Mitchell?

19 A Maybe.

20 Q Well, Mr. Mitchell never said anything to you about whether
21 he knew you were an enforcer for drug dealers, did he?

22 A No. I think Mr. Harris talked to him about that. I believe
23 he did.

24 Q You think Mr. Harris talked to you about that?

25 A Talked to Bo about that, Mr. Mitchell.

1 Q You think he did. You don't know that, though, do you?

2 A Yeah. He said he told him all about me.

3 Q Well, did you and Mr. Harris talk about you being an
4 enforcer for drug dealers?

5 A Yeah.

6 Q Okay. And you told him that you were?

7 A Yes.

8 Q And these are drug dealers in South Baltimore?

9 A Some of them.

10 Q Where are the others?

11 A Um-um.

12 Q Um-um is not an answer. Where were the others?

13 A South Baltimore, surroundings, surrounding part of South
14 Baltimore, Glen Burnie.

15 Q South Baltimore meaning south of here and down towards Glen
16 Burnie?

17 A That's right.

18 Q That's where you hung out, right?

19 A Um-hum.

20 Q Okay. Now, prior to your being thrown in the same cell with
21 Mr. Harris, you'd never met him before, correct?

22 A Nope.

23 Q And he didn't come right out when you got thrown in the cell
24 and make these statements to you, did he, about the double murder
25 that you've testified about?

1 A No, he didn't.

2 Q It took quite a while for you to get that information,
3 didn't it?

4 A Maybe about a week.

5 Q And it was because he trusted you that he did that, correct?

6 A That's right.

7 Q All right. And at that time he wasn't recruiting you to do
8 any work for him, was he?

9 A Say that again.

10 Q At that time he wasn't recruiting you to do any work for
11 him, was he?

12 A No.

13 Q Okay. Now, when you had your conversation with Bo, which
14 was sometime right after you had these conversations with Mr.
15 Harris, is that correct?

16 A Right.

17 Q You met Bo through Mr. Harris?

18 A Yup.

19 Q So were you all on the same tier or something?

20 A Nah.

21 Q So how did you happen to meet?

22 A In the courtyard.

23 Q So when you were out, your outdoor time, whatever?

24 A Right.

25 Q All right. And Mr. Harris introduced you to Bo?

1 A Right.

2 Q And the only thing Bo ever told you about what you testified
3 here today is that Mr. Harris, quote, "handled some business for
4 him", correct?

5 A Yup.

6 Q And your interpretation of what Mr. Harris, what Mr.
7 Mitchell was saying was that he'd done some murders for him?

8 A Yes.

9 Q He didn't say that, though, did he?

10 A No. He said Shelton put some work in for him.

11 Q Put some work in for him?

12 A And some business.

13 Q And you say Mr. Harris told you that these murders in Hasim
14 Rahman's car took place right after Rahman had won the title?

15 A Yeah. That's what he told me.

16 Q You don't know when that was, though, because you were
17 locked up somewhere, right?

18 A Yeah. I was in a rehabilitation center. Yeah. Locked in a
19 rehabilitation center.

20 Q And you said in your interviews with Detective Mallin and
21 Niedermeyer, and again here today, that the murder took place
22 because of a money dispute between Bo and the victim related to
23 the rap music business, correct?

24 A That's what I said.

25 Q And that's, you said that because that's what Mr. Harris,

1 you say, told you, correct?

2 A Eh, pretty much.

3 Q Somebody else state that?

4 A Do you want me to answer that? No. No. Shelton said that.

5 Q And you said, did you not, that this man who was killed --
6 at this point in time when you're talking to the police officer
7 you don't know the victim's name, do you?

8 A No.

9 Q Okay. And you've said that he, this man, victim, had put a
10 contract or taken a contract on Bo's life, that Mr. Harris told
11 you that?

12 A Yeah, something like that.

13 Q Did he say that or not?

14 A I believe it was something like that. No. He said that he
15 was coming to get a gun from Bo but in reality he was going to
16 use that gun on Bo.

17 Q So a man who had a contract to kill Bo, and who Bo knew had
18 a contract to kill him, asked Bo to get him a gun?

19 A I didn't say anything like he had a contract. What I said
20 is this guy wanted to kill Bo was going to purchase a gun from
21 Bo, get a gun from him and turn around and use it on him. That's
22 what Shelton told me was the reason why Bo asked him to go kill
23 that person.

24 Q Now, on October 14th, 2003, this is the hearing in front of
25 Judge Byrnes where the detectives came and took you out of the,

1 is it the Western Correctional Institution?

2 A Yes.

3 Q And drove you to Baltimore, to Baltimore County?

4 A Yes.

5 Q And they took you in before Judge Byrnes, correct?

6 A Yes, they did.

7 Q And the State's Attorney showed up and told Judge Byrnes
8 that you needed to be released so you could work with the State
9 on this double homicide, correct?

10 A That's right.

11 Q You didn't say to Judge Byrnes that day, I don't want to get
12 out, Judge, did you?

13 A No.

14 Q Because you did want to get out, didn't you?

15 A Of course. Everybody wants to get out of jail.

16 Q And so they asked for probation with a condition that you
17 cooperate with them, right?

18 A Right.

19 Q And do you remember the Court being concerned with doing
20 that because you'd already walked away from Second Genesis?

21 A I'm not sure. I wasn't even really talking to the judge.

22 Q At the time you were in front of Judge Byrnes, he wasn't
23 very happy with you, was he?

24 A Never was.

25 Q And do you recall when you were in the grand jury, a grand

1 juror, not Mr. Harding, but a grand juror asked you a question
2 about whether you had been in rehab?

3 A Right.

4 Q And you told the grand juror that you had been in rehab but
5 you were now out, correct?

6 A That's right.

7 Q You didn't tell them that you walked away from rehab, did
8 you?

9 A No. I was talking about, this is even before that started.
10 That was '01. Talking about '03.

11 Q You did not --

12 A That was in the past.

13 Q You did not tell the grand juror that you had walked away
14 from rehab, did you?

15 A They didn't ask.

16 Q Let me show you Page 21, Line 8. A juror. See that?

17 A Yup.

18 Q Has anything particularly happened in your life in the past
19 year or so that sort of brought forth this convergence of this or
20 is it a convergence of sorts? That is, you said you were sort of
21 an enforcer, so are you giving up that life? The witness: Yes.

22 A juror: As far as an enforcer? Yes, I am.

23 Then a juror: Yes, sir. You mentioned, were you in
24 rehab before? Yes, ma'am.

25 May I ask for what? Substance abuse.

1 A juror: Substance abuse. Witness: Yes, Second
2 Genesis.

3 A juror: How are you doing?

4 THE COURT: Mr. Martin, that part of it is not being
5 displayed.

6 Q I'm sorry, Your Honor. I'm reading it and not looking at
7 the screen. I should be reading and looking at the screen.

8 A juror: How are you doing? And you say, actually,
9 I'm out now but I did the program in 2001, I think it was 2002.
10 See that?

11 A Right.

12 Q You didn't tell that juror that you had walked away from the
13 program, did you?

14 A Didn't ask.

15 Q You didn't tell him that, did you? All you said is you were
16 out.

17 A That's right. They didn't ask.

18 Q And you didn't tell them you were out because you walked
19 away, did you?

20 A No. If they would have asked, I would have told them.

21 Q Now, the intention that the prosecutors had that day in
22 court in front of Judge Byrnes in getting you out was so you
23 could tape conversations with Mr. Harris, isn't that right?

24 A Right.

25 Q And would it be fair to say that while Judge Byrnes went

1 along with that, he was reluctant to do so?

2 A I don't know.

3 Q And when he let you out that day, he told you that if you
4 used drugs again you were going right back to jail, isn't that
5 right?

6 A That's right.

7 Q And in 2003, you used drugs again, didn't you?

8 A Yep.

9 Q In fact, you got out in October of 2003. You missed your
10 first two appointments with your probation officer, didn't you?

11 A I don't think so. I'm not sure.

12 Q You were violated for missing those appointments, weren't
13 you?

14 A I don't think the first two.

15 Q Were you violated for missing an appointment in the
16 beginning of November, 2003?

17 A I don't know. Do you have the violation papers?

18 Q We'll go through that.

19 A All right.

20 Q And do you recall that in May of 2004, you had a probation
21 violation hearing in front of Judge Byrnes in Baltimore County?

22 A I think it was.

23 Q So there's no question, let me show you the page. I'm not
24 sure how to make this clearer, Your Honor. If I can't do it, Mr.
25 Flannery will help me, I'm sure. See that date? May, 2004.

1 A I see it.

2 Q I can zoom more.

3 A That's good.

4 Q See that date?

5 A Yup.

6 Q And the title of that case was State of Maryland versus
7 Christopher Dobropolski, correct?

8 A Yep.

9 Q So you believe that that's your probation violation in front
10 of Judge Byrnes?

11 A Yep.

12 Q Pardon me?

13 A Yes.

14 Q Okay. And the allegations against you --

15 MR. HARDING: Objection.

16 THE COURT: Yeah. Why don't you just do it without the
17 transcript, Mr. Martin.

18 MR. MARTIN: I'm sorry, Your Honor. What?

19 THE COURT: Do it without the transcript if you want to
20 bring out the --

21 BY MR. MARTIN:

22 Q The allegations against you were failure to report from
23 December 3rd, 2003, correct?

24 A Yes.

25 Q All right. I said November. I apologize for that.

1 Condition two is a failure to produce documentation that you were
2 working. And I believe you actually did have some documentation
3 but you hadn't produced it yet, correct?

4 A Right.

5 Q And they were unable to verify your address, correct,
6 because you didn't give them one?

7 A I did give them an address.

8 Q Well, they said in court you didn't have it, didn't they?

9 A No. It was -- I forgot how they do that.

10 Q Pardon me? Could you move your hand away from your mouth?

11 A I think, because if you don't report, then they can't verify
12 your address, what it was. But I gave them the address. They
13 knew the address because they showed up.

14 Q How did you give them the address if you didn't report?

15 A You give them the address before you're released. I had to
16 because I was leaving for prison.

17 Q And when they showed up, you weren't there, correct?

18 A They never showed up.

19 Q And you were also violated, were you not, for violating your
20 special condition about urine samples between November 7th, 2003
21 and January 30th, 2004, correct?

22 A That's right.

23 Q You hadn't given any urine samples, had you?

24 A I don't think so. I think I'm just, yeah, like 20 of them.

25 Q And at the time you said to Judge Byrnes that you weren't

1 using drugs, even though you hadn't given urine samples, correct?

2 A Say it again.

3 Q You told Judge Byrnes that you weren't using drugs, correct?

4 A No. I told Judge Byrnes that I was using drugs even though
5 I wasn't violated for it.

6 Q Did you tell Mr. Reilly, who was your probation officer,
7 that you weren't using drugs?

8 A I wasn't reporting so I didn't tell him.

9 Q Because you didn't report, you never told him that?

10 A That's right. That's correct.

11 Q Okay. And when you said, you said in court, did you not, to
12 Judge Byrnes that you weren't using drugs?

13 A I told him I was using drugs.

14 Q Well, let's take a look at page --

15 A Even though I wasn't violated for it.

16 Q Page Seven. See below that note? That thing that says
17 "defendant: I wasn't using drugs?"

18 A I said I was using drugs. I don't know why it came out like
19 this. Because he made a statement after that. He said, then,
20 I'm going to find you guilty for that, too, for that violation,
21 too, or something.

22 Q Well, the transcript says, does it not, I wasn't using
23 drugs. And the Court says, sure you were. Guilty. Right?

24 A I said I was.

25 Q Well, the judge said, sure you were. Why would he say that

1 if you said you weren't using them?

2 A I don't know. I specifically remember telling him I was.

3 Q So your testimony here is that the transcript, the official
4 transcript is wrong, correct?

5 A Yeah. That's what I'm saying.

6 Q And that you didn't lie to Judge Byrnes that day?

7 A I didn't lie to him because I told him I was.

8 Q And he found that you were using drugs, didn't he?

9 A Because I told him.

10 Q And were you using drugs when you didn't give the urinalysis
11 in the beginning of November of 2003?

12 A Well, this is how he found out I was using drugs, because I
13 told him. Because I was never violated for not, for giving dirty
14 urines. I was violated for not producing urines at all.

15 Q But you told him that you were using drugs?

16 A That's right.

17 Q And the reason you didn't give the urines was because you
18 were using drugs, is that right?

19 A Yep.

20 Q Okay. So in November of 2003, you had your first, one of
21 your first meetings with the probation officer. You didn't give
22 a urine sample in November of 2003 because you were using drugs,
23 correct, and you didn't want to get caught?

24 A I don't know if I started using in November or December.

25 Q You didn't give a urine sample in November, did you?

1 A I might have just been not reporting.

2 Q In fact, you didn't give any urine samples prior to being in
3 front of Judge Byrnes, did you?

4 A That's right.

5 Q Because you didn't want to get caught using drugs, right?

6 A No. Yeah. I was using drugs again.

7 Q Because you knew that as soon as he found out about that,
8 you were going back to jail, isn't that right?

9 A Yeah. That's how it works.

10 Q You didn't want to go back to jail, did you?

11 A No.

12 Q And so there you were in May of 2004 and you're in front of
13 Judge Byrnes, correct?

14 A Yes.

15 Q And he's on the verge of sending you back to jail, isn't he?

16 A Yes, he was.

17 Q And Mr. Harding shows up, doesn't he?

18 A Yep.

19 Q And Mr. Harding convinced Judge Byrnes not to put you back
20 in jail, didn't he?

21 A Yep.

22 Q So you were still cooperating and the government kept you
23 out of jail?

24 A That's right.

25 Q Even though you had violated your probation, right?

1 A Yup. Yes.

2 Q And even though, as you admitted here today, you were in
3 violation of your probation as early as November of 2003, before
4 you testified in front of the federal grand jury, isn't that
5 right?

6 A I don't think the violation came.

7 Q You hadn't given a urine sample, did you?

8 A No. But I wasn't violated.

9 Q And you had been using drugs, weren't you?

10 A I don't know if I was using then or not. I know I wasn't
11 reporting.

12 Q You were accused in your probation violation hearing of not
13 giving urine samples in, between November 7th, 2003 and January
14 30th, 2004, correct?

15 A Right.

16 Q And you testified here today that the reason you didn't give
17 them was because, if you gave them, you knew you'd be caught?

18 A Or because I wasn't showing up, either.

19 Q You weren't showing what?

20 A I wasn't showing up. I wasn't reporting. So it could have
21 been that I just didn't report. I'm not sure if started using
22 drugs in November or December or something. I'm not sure.

23 Q All right. So today you're not sure? And in November or in
24 May of 2004, even though the transcript says you denied using
25 drugs, you say you said you were using drugs?

1 A I told him I was using drugs, that I was --

2 Q Was Mr. Harding there when you said that?

3 MR. HARDING: Objection.

4 THE COURT: Were you finished your answer?

5 MR. MARTIN: I'm sorry, Your Honor. I did it again.

6 You said you were using drugs.

7 THE WITNESS: I just don't know when I started using
8 them.

9 BY MR. MARTIN:

10 Q But you say you told the Court that you were using them and
11 that this transcript is wrong?

12 A I was using drugs. I told him that. I just don't know when
13 I started. I don't know if I started November or December.

14 Q Was Mr. Harding there when you said that, when you admitted
15 to Judge Byrnes that you were using drugs?

16 A I'm not sure if he -- I was standing at a table.

17 Q He was actually there for the hearing, though, wasn't he?

18 A Yeah.

19 Q And he actually had a conversation with Judge Byrnes, didn't
20 he?

21 A Right.

22 Q But it wasn't on the record, was it?

23 A I don't know. I don't know.

24 Q You don't know?

25 A I don't know. I don't know when they turn the recorder on

1 and off.

2 Q He didn't stand up in open court and talk about it, did he?

3 A No.

4 Q He went up to the bench, right?

5 A That's right.

6 Q And had a conversation with Judge Byrnes at the bench?

7 A I was standing right there.

8 Q And it wouldn't surprise you that that conversation doesn't
9 appear in this transcript, would it?

10 A I didn't look.

11 Q So at some point that day there was a promise made to you
12 about what you needed to do if they were going to let you out.
13 Do you agree with that?

14 A Yes.

15 Q And just let me read this to you. Page Six, Mr. Harding.
16 The judge told you you were waiving your rights to all, your
17 rights to contest the probation violation. Do you recall that?

18 A That's right.

19 Q And he said to you that you waive all those rights. And he
20 said, there's been one promise made to you which we will not put
21 on the record but the one we discussed at the bench. Other than
22 that, have any promises been made to you to get you to proceed in
23 this fashion? Defendant: No. Are you doing this of your own
24 free will? I am. What was that promise made to you at the
25 bench?

1 A Promise? I have no idea.

2 Q Someone made you a promise to get you to plead guilty to the
3 probation violation, didn't they?

4 A I'm not sure.

5 Q Well, let me ask it this way. Was the promise that was made
6 to you at the bench a promise that if you continued cooperating,
7 he would let you out again, even though you violated your
8 probation?

9 A It could be.

10 Q But you don't recall?

11 A Not specifically.

12 Q It's not on the record so we don't know, right?

13 MR. HARDING: Objection.

14 A I have no idea.

15 THE COURT: Yeah. The witness hadn't completed his
16 answer. Go ahead, Mr. Dobropolski.

17 A I'm not 100% sure. Things went so fast and we were at the
18 bench talking. I mean, it was six years ago, something like
19 that. Four years ago. Whatever.

20 Q If it had been on the record, though, we would all have been
21 able to see what happened, didn't we?

22 A But I think the reason they didn't have it on the record was
23 because of the work that I was doing. That's what I think. I'm
24 not 100% sure about that, obviously.

25 Q And so once again he let you out that day, correct?

1 A Yes.

2 Q So up to that point in May of 2004, you had used your
3 information to get released from jail after serving less than
4 half of your sentence, correct?

5 A Okay.

6 Q So that's a yes, right?

7 A Yes.

8 Q And you were in jail for beating up your girlfriend?

9 A Yes.

10 Q And have you since had another altercation with either that
11 girlfriend or another girlfriend?

12 A Another girlfriend. Different one.

13 Q You beat a different one up?

14 A Yes.

15 Q Okay. And did you, you were found guilty of that?

16 A Yes, I was. I pled guilty to it.

17 Q Is that what you're in prison for now?

18 A No. This is from the original one. I received an eight
19 year sentence and I'm finishing it now.

20 Q So you're finishing the eight year sentence that started
21 this odyssey, correct?

22 A Yeah.

23 Q So you've beaten up two girlfriends in the last eight years?

24 A Yes.

25 Q Now, we talked about this a little bit and you talked about

1 it this morning. Judge Byrnes let you out of jail when, at least
2 in theory, you still had four years to serve on your sentence,
3 correct?

4 A Right.

5 Q But you expected that you would get out in eight months?

6 A Yup.

7 Q Okay.

8 MR. HARDING: Sorry. Are we talking about -- which
9 hearing before Judge Byrnes?

10 Q We're talking about the first one when he first let him out
11 of jail, October 15th, 2003. And it's because the police and the
12 prosecutors asked him to let you out, right?

13 A Yes.

14 Q And pretty clear to you, wasn't it, that if it hadn't been
15 for the urging of the police and the prosecutors that day, that
16 Judge Byrnes would not have let you out?

17 A I don't know what Judge Byrnes was thinking. He might have.

18 Q Now, it's also clear to you, isn't it, Mr. Dobropolski, that
19 but for the story that you're telling here today and that you
20 told to the police and to the prosecutors and to the grand jury,
21 that nobody on the law enforcement side would have gone to bat
22 for you, correct?

23 A I don't know.

24 Q You think they might have gone to bat for you without you
25 dangling this story in front of them?

1 MR. HARDING: Objection.

2 THE COURT: Overruled. You may answer.

3 A I don't know.

4 Q You wrote the letter specifically to get them to go to bat
5 for you, didn't you?

6 A I think there's certain officers on the force that would
7 have helped me out, yeah.

8 Q What about the people you're dealing with now? Mr. Harding
9 and the others.

10 A Oh, now, I doubt it, because --

11 Q Mr. Harding. I'm sorry. I interrupted you again. I'm
12 sorry.

13 A Go ahead.

14 Q Mr. Harding wouldn't have been in that courtroom in 2004 in
15 front of Judge Byrnes if you weren't telling the story that
16 you're telling now, would he?

17 A He wouldn't have known who I was. That's right.

18 Q Now, at the time -- strike that. You met Mr. Harris in
19 September, 2002. It took you several weeks to get the
20 information that he gave you. And then you waited eight month to
21 report it, correct?

22 A That's right.

23 Q And you actually didn't report it for a whole year? You
24 wrote a letter but you didn't report, you didn't name Mr. Harris,
25 you didn't give anybody any details, right?

1 A Yes.

2 Q And so this, this story that you told here today and that
3 you're telling me, you used that as sort of a currency that you
4 could trade for your freedom, didn't you?

5 A No, not really.

6 Q You didn't use the story as a currency you could trade for
7 your freedom?

8 A No. That's how you put it.

9 Q What do you think you did?

10 A Did the right thing.

11 Q Did the right thing?

12 A Exactly.

13 Q And you didn't really want out of jail? You just wanted to
14 do the right thing?

15 A I would have waited until I got out of jail. I told you, I
16 still would have did this.

17 Q You would have waited until you got out of jail?

18 A Yeah.

19 Q Despite what you wrote Judge Byrnes about having to get out
20 of jail?

21 A Speaking, if I would have had to wait, I would have waited.
22 I still would have did this. You'd still be sitting there. I'd
23 still be sitting here.

24 Q You didn't tell Judge Byrnes on October 15th that you really
25 didn't really want out yet, did you?

1 A And I told Gary Niedermeyer I really didn't want to do this
2 while I was incarcerated, let me finish my sentence. And I
3 expressed this to Mr. Harding, too.

4 Q You told Niedermeyer, Mr. Niedermeyer that?

5 A I sure did.

6 Q Did he write it down?

7 A I doubt it because he wanted me to go ahead and started with
8 him right then and there.

9 Q But you didn't tell Judge Byrnes on either of the two
10 occasions that you wrote him that you didn't want to get out of
11 jail, did you?

12 A No.

13 Q Now, you agree that, without your story, the prosecutors
14 never would have gone to bat with you to get you out of jail,
15 would they?

16 A That's probably true, yes.

17 Q And so part of the bargain that you offered was that when
18 you left jail, when you got out, that you would go out and try to
19 seek out Mr. Harris? You would wear a wire and you would see if
20 you could get him to confirm on tape what you told the police?

21 A Yes.

22 Q So that was your whole task for law enforcement, was to get
23 Mr. Harris to admit that he committed these murders, correct?

24 A Yes.

25 Q Your Honor, I have a whole series now on these tapes. I

1 think this would be a good time to do the break.

2 THE COURT: All right. Due to a scheduling issue,
3 members of the jury, we'll recess a little early today.

4 Please leave your note pads on your chairs. Have no
5 discussion about the case or about the evidence you've heard so
6 far. Continue to keep an open mind about all issues.

7 I'm going to be working with counsel this afternoon
8 after you depart to see if we can't really start tomorrow morning
9 exactly at 9:30. So that's going to be our goal.

10 Please be back in the jury room tomorrow morning no
11 late than 9:30. We'll resume at that time. The jury's excused
12 until 9:30 tomorrow.

13 (Jury exits the courtroom.)

14 THE COURT: You're excused, Mr. Dobropolski.

15 (Witness exits the courtroom.)

16 THE COURT: Mr. Martin is excused. I want to spend
17 time now this afternoon seeing if we can't finalize a ruling on
18 this whole question relating to Mr. Gardner. Mr. Flannery, I
19 presume you're prepared to address that if you need to.

20 Mr. Harding, I know that the government's original
21 position was to oppose, I guess, on two or three, perhaps more,
22 different grounds. But having read the motion filed by counsel
23 for Mr. Gardner and thought about it now, what's the government's
24 position? Mr. Hanlon, are you going to handle that?

25 MR. HANLON: Yes, Your Honor.

1 THE COURT: Certainly. Certainly.

2 MR. HANLON: Your Honor, the government does continue
3 to oppose the admission of the fact of the state jury verdict in
4 this case. Essentially, for many of the same reasons that we've
5 always opposed it. The government simply feels that it's not
6 relevant to this jury's determination.

7 Having reviewed the brief that was filed by Mr. Coburn
8 and Mr. Kurland about these issues, the government's position is
9 not changed. And if the Court wishes me to be heard with respect
10 to points in that brief, I'm happy to address them now.

11 The brief --

12 THE COURT: Let me try to do it this way. The defense
13 here, among other things, is that there was no enterprise, that,
14 for the sake of discussion, we'll say, let's assume from time to
15 time Defendant A got together with Defendant B to sell some
16 drugs. Defendant A got together with Defendant D to buy a gun,
17 sell a gun. Defendant B and C got together and committed a
18 murder. But the defense here is that the jury will not be able
19 to conclude beyond a reasonable doubt that there was an
20 enterprise of sufficient continuity, that none of the defendants
21 were motivated to commit any acts or omissions by their desire to
22 further or improve their standing in the enterprise.

23 Why doesn't, why aren't counsel for Mr. Gardner
24 entitled to bolster that argument with an argument along the
25 lines of, my client's been convicted, Montgomery is lying or has

1 made up this business about the reason for the Jones-Spence
2 murder had anything to do with Mr. Mitchell or Mr. Martin or Mr.
3 Harris, and finally, this isn't specifically mentioned in the
4 defendant's brief but it seems to me there's no question that if
5 Mr. Gardner were to testify in this case, the government would
6 not be opposed.

7 In other words, Mr. Gardner could himself, through his
8 testimony, could provide exactly the same evidence that his
9 counsel are suggesting should be admissible through some other
10 source. So that being the case, I'm hard-pressed to see how I
11 can prohibit evidence of, I'll grant you tenuous relevance, but
12 relevance nonetheless, and leave for the jury under proper
13 instructions what the jury makes of evidence that Mr. Gardner has
14 been convicted in state court.

15 So that's my take on it.

16 MR. HANLON: I believe that that's the theory of the
17 defense as articulated in their brief. With respect to counsel,
18 the government feels that there's actually another strategic
19 purpose that --

20 THE COURT: Oh, of course. As we discussed during the
21 motions hearing, one of the things the introduction of this
22 evidence would be aimed at, whether counsel admitted or not, and
23 I'm not calling on them to admit it, but they want to suggest to
24 the jury that Mr. Gardner should be entitled to some sympathy or
25 they should ignore Mr. Gardner, that Mr. Gardner has been

1 convicted, has a sentence of life without parole, and to impugn
2 the government's motivation for including him in this indictment.

3 And I'm not going to let them do that, as I made clear
4 in the motions hearing. And I'll craft some instructions that
5 makes it clear that the jury may not use the evidence for that
6 purpose.

7 But the fact that evidence might be used for an
8 improper purpose has never been a reason to exclude it.

9 MR. HANLON: Absolutely, Your Honor.

10 THE COURT: Particularly evidence from a defendant in a
11 criminal case.

12 MR. HANLON: And certainly usually the government is
13 making that kind of an argument. Here's the government's take on
14 this particular evidence.

15 The defense theory as articulated is that the verdict
16 is --

17 THE COURT: By the way, I'm sorry to cut you off. And
18 then I won't again. Do you agree with the Court that if Mr.
19 Gardner were to take the stand, he could tell the jury that he's
20 been convicted and serving a life sentence?

21 MR. HANLON: I believe that if Mr. Gardner took the
22 stand, he could tell the jury that he had aid and abetted and
23 committed the murder.

24 THE COURT: You don't think he could answer the
25 question, Where are you residing? He could say, I'm residing in

1 the Division of Correction, serving a life without parole
2 sentence?

3 MR. HANLON: In that kind of situation --

4 THE COURT: Of course he would. There would be no
5 basis --

6 MR. HANLON: I'll grant that for purpose of argument,
7 Your Honor.

8 THE COURT: All right.

9 MR. HANLON: Of course, we're not in that situation. I
10 would also point out, Your Honor, that if the defense were
11 offering to us a stipulation that Mr. Gardner had committed the
12 crime, we'd be in a different kind of situation.

13 THE COURT: Again, as I said earlier, the question
14 before the Court first is whether the Court will permit, and it's
15 actually more, probably more appropriate to phrase it, whether
16 the Court will prohibit the induction of this evidence. How this
17 evidence gets before the jury is a separate question.

18 MR. HANLON: Yes.

19 THE COURT: And how much of it. Meaning the
20 conviction, how the conviction was obtained, and the sentence,
21 and all parts of the sentence. All of those are subsidiary
22 questions that I'm not dealing with now. Right now I'm focused
23 on is Mr. Gardner entitled, in view of the Sixth Amendment, to
24 put this evidence before the jury of the fact that he's been
25 convicted of the Jones Spence murder?

1 MR. HANLON: No, in the government's opinion because
2 the verdict is not relevant to any of the issues in this case.
3 And I'll explain.

4 THE COURT: Well, see, I'm sorry to cut you off again.
5 Forget the verdict. Forget the verdict. Forget the verdict,
6 forget the sentence, forget whether the verdict is a jury verdict
7 or a verdict by a judge. Forget whether Mr. Gardner pled guilty
8 under an Alford plea or no contest. Leave all of that to one
9 side. Focus first on the fundamental question of whether the
10 evidence of the conviction for that murder in state court is
11 admissible.

12 MR. HANLON: It's not admissible, Your Honor, because
13 the fact of that conviction, to murder under state law does not
14 reach any of the RICO or conspiracy theories that are before the
15 Court in this case. The State, whether it was the jury or a
16 judge or whatever, would not have been required as part of that
17 conviction to find any of the elements that the defense believes
18 the state conviction is relevant to.

19 THE COURT: Of course not. Of course not.

20 MR. HANLON: Hence, it's irrelevant for the issues that
21 the defense claims it's relevant for.

22 THE COURT: Well, but that's not true because if
23 Montgomery -- am I correct that Montgomery is the only source of
24 evidence you have, apart from reasonable inferences, am I correct
25 that Montgomery's the only source of evidence you have to tie

1 that murder to the charges in this case? To the RICO conspiracy?

2 MR. HANLON: No, it's not, Your Honor.

3 THE COURT: What else is there? What else is there?

4 MR. HANLON: On the broader, my expertise is sort of
5 the Spence murder. Can I ask Mr. Harding?

6 THE COURT: Sure, you can confer.

7 (Pause while government counsel confer.)

8 MR. HANLON: Your Honor, we have another witness,
9 Ernest Reynolds, who will testify.

10 THE COURT: Who is Reynolds?

11 MR. HANLON: He's another cooperating witness. He's an
12 individual who has engaged in drug trafficking during the time
13 frame of the 1990s with people he knew of as Goo and Wayne. He
14 purchased from Card on various, at various points in time.

15 THE COURT: Okay. What does Reynolds say and what has
16 he said in the grand jury or in a 302 or DEA-6 that ties the
17 Jones Spence murder to a RICO conspiracy?

18 MR. HANLON: Mr. Reynolds will testify that he was told
19 by defendants in this case --

20 THE COURT: Who?

21 MR. HANLON: By Mr. Gardner in this case that the
22 reason that the Spence murder was committed was in order to get
23 money in order to pay for Mr. Martin's attorney. He'll also
24 testify about some of the initial planning of the crime and how
25 it was initially conceived as a robbery, to take money from

1 Darius Spence, a drug dealer. And this was a plan that was put
2 together by Mr. Gardner and Mr. Martin before Mr. Martin got
3 locked up and then needed money for his attorney's fees.

4 THE COURT: And was that evidence introduced in the
5 state trial of Mr. Gardner?

6 MR. HANLON: I don't believe Ernest Reynolds' testimony
7 was introduced in the state trial. And I'm not sure that the
8 state trial went into as much detail about the relationship of
9 Mr. Gardner --

10 THE COURT: What was the evidence of motivation in the
11 state trial?

12 MR. HANLON: I believe that the state trial was simply
13 a theory of robbery motivation, that there was believed to be
14 drugs and/or money in the apartment and this was the motivation
15 of the robbery. Whether or not there was a particular intent to
16 get money and drugs to help Mr. Martin or anyone else, I'm not
17 sure that that was presented in the case and I'm not sure that
18 the state would have needed to.

19 THE COURT: I'm having a difficult time appreciating
20 that if A is going to commit a theft or a robbery, the immediate
21 motivation, of course, is to get the money. Now, if A achieves
22 that purpose of committing the robbery, A's got the money. Now,
23 A is free to do whatever he wants with that money.

24 And so what the government is saying here is because
25 Mr. Gardner was motivated in part, because you're not suggesting

1 that all of the money was going to Mitchell's attorney.

2 MR. HANLON: Actually, I believe that will be the
3 testimony, Your Honor. That this was originally put together --
4 to Mr. Martin. The government --

5 THE COURT: You're contending that if they had walked
6 out of there with \$100,000, that they were going to give all of
7 that money to some lawyer to represent Mr. Mitchell? You have
8 evidence of that?

9 MR. HANLON: Well, Your Honor, I should say that they
10 were going to use whatever they needed to get to get money to pay
11 for Mr. Martin's attorney, not Mr. Mitchell's attorney but Mr.
12 Martin.

13 THE COURT: I'm sorry. Mr. Martin's attorney.

14 MR. HANLON: I suppose if there had been excess, sure,
15 they could have used it for some other purpose.

16 THE COURT: There's always excess.

17 MR. HANLON: By that logic, Your Honor, any robbery,
18 and any taking of money or drugs could theoretically be excluded
19 from a RICO or drug conspiracy on the logic that there could
20 conceivably be an excess which is going to be used for other
21 purposes.

22 THE COURT: We're not talking about excluding evidence.
23 We're talking about admitting evidence. That's exactly the
24 point. That's exactly the point. You don't worry about this in
25 the RICO cases that I've seen, most of them, certainly. This

1 seems to be sui generis. Mr. Harding is shaking his head.

2 Give me one other example in the State and District of
3 Maryland of a person convicted of first degree murder in state
4 court who is then charged in a RICO conspiracy. In this
5 district, Mr. Harding. Or just cite me a case where that's been
6 done.

7 MR. HARDING: Of a person who's charged with murder
8 who's then charged in a RICO conspiracy?

9 THE COURT: No. Who is charged with having committed
10 an act of racketeering murder where that person has already been
11 convicted in state court after a jury trial of first degree
12 murder.

13 MR. HARDING: Well, no, I can't give you another
14 example of that, Your Honor. But what I was shaking me head
15 about is that there was actually copious case law on how
16 connected a particular event has to be to a racketeering
17 enterprise in order to make it in furtherance of the enterprise.

18 THE COURT: Of course.

19 MR. HARDING: It's actually very, it's stunningly
20 slight.

21 THE COURT: I don't have a problem with that. Really.
22 You two are missing the point here. We're not talking about
23 excluding evidence. We're talking about whether evidence should
24 be admitted.

25 MR. HANLON: Yes, Your Honor.

1 THE COURT: I'm not suggesting that this murder is
2 somehow improperly included in the indictment. Of course it is.

3 MR. HANLON: That may have been my confusion, Your
4 Honor. I thought the Court was asking some question about that.

5 THE COURT: No. Of course it's proper. Of course it's
6 proper. The jury's got to decide what were the various
7 motivations for this murder because you got, you got to prove a
8 specific motivation.

9 MR. HANLON: Yes, Your Honor.

10 THE COURT: Right? The State didn't have to prove a
11 specific motivation.

12 MR. HANLON: Correct.

13 THE COURT: Motivation is irrelevant in the state case.

14 Now, the defense argument is that the context and the
15 facts of this case make it less likely, make it less likely
16 that a reasonable fact finder will conclude that the motivation
17 was the one you have to prove by evidence that he's already been
18 convicted in state court of what appears to be simply a classic
19 felony murder, as well as a first degree murder.

20 MR. HANLON: In other words, Your Honor, the defense
21 wants to use the fact of the existing state convictions to prove
22 the reverse inference. Something that is not an element of the
23 state conviction must therefore not be true.

24 THE COURT: Not the fact of the state conviction. How
25 do they, how do they impeach Montgomery if Montgomery -- and

1 correct me if I'm wrong. And I understand your point, that it
2 would not have been necessary or perhaps even, perhaps
3 appropriate although, frankly, motivation is always admissible,
4 state and federal court. If Montgomery didn't say anything about
5 raising money to pay Martin's lawyer, did he? The state, in the
6 state testimony?

7 MR. HANLON: I don't believe so. Not in the state
8 testimony.

9 THE COURT: Okay. So how do they impeach Montgomery
10 who now comes in to federal court and says, oh, the reason, the
11 motivation, the objective of this robbery was to steal money, not
12 because anybody wants money, but specifically to steal money to
13 pay Martin's lawyer, without showing the circumstances
14 surrounding the state prosecution? Most of which I'm not, I'm
15 still not even aware of.

16 MR. HANLON: The way I would do it, Your Honor, and
17 frankly, it sounds better without pointing out that it was a
18 prosecution in the state court.

19 THE COURT: Sounds better for you.

20 MR. HANLON: No. Sounds better for the defense.

21 THE COURT: Well, that's their call, Mr. Hanlon. Look,
22 let's be very clear. You don't get to decide what's best for the
23 defense, obviously.

24 MR. HANLON: Yes, Your Honor.

25 THE COURT: And I don't get to decide what's best for

1 the defense. Of course it's crazy. Let's be up front about
2 this. It's absolutely crazy for a defense lawyer to stand up in
3 front of a jury and say to the jury, yes, my guy committed this
4 murder but not for the reason the government said he committed
5 it. I absolutely agree with you. That's insane.

6 No reasonable lawyer would do it except these two
7 reasonable lawyers, who don't have some abstract case, you know,
8 who don't have some hypothetical case. They have a real case
9 here.

10 Now, I confess, for the life of me, you know, RICO is
11 just one of those things that catches everybody's attention. And
12 I've tried to sort of think about this. And I'm not sure the
13 RICO count is the most important count in this indictment. It's
14 the first count. It probably leverages a lot of evidence into
15 the record that perhaps wouldn't come in. I don't know. But as
16 I think about it and think about it, and as I listen to the
17 evidence, I'm not sure it's the most critical count, but that's
18 what they've decided to attack.

19 Now, there are other 1959 counts as well.

20 MR. HANLON: Yes, Your Honor.

21 THE COURT: Which are closely overlapping. But there's
22 a lot more in this indictment.

23 Anyway, my point is, I don't get to decide, the
24 government doesn't get to decide how counsel for Mr. Gardner
25 present his defense. My focus here is on admissibility of

1 evidence. And while I absolutely appreciate the improper purpose
2 to which that evidence can be put, that can be said about an
3 awful lot of defense evidence.

4 Jury nullification floats around every criminal trial
5 in America. And part of my responsibility is to, in appropriate
6 ways, combat the prospect of jury nullification. But I don't see
7 why I should preclude the defense from supporting arguments
8 related to Mr. Gardner's motivation, particularly in light of the
9 fact that the government, I think, has to agree that if Mr.
10 Gardner testifies, we don't have this discussion. We spend this
11 time talking about jury instructions.

12 And so it may be the government wants to say, well,
13 Judge, he's not going to testify, or he's unlikely to testify, so
14 let's not cross that bridge. But if it's admissible, it's
15 admissible. It's admissible.

16 Now, the government gets the benefit of Rule 403 just
17 as the defendant gets the benefit of Rule 403. And there is the
18 potential for prejudice to the government. There is the
19 potential for confusion of the issues. But I'm hard-pressed to
20 exclude defense evidence under 403 of this sort.

21 So let me be quiet for a moment, Mr. Hanlon, and let
22 you present an argument that I haven't permitted you to present
23 up until now.

24 MR. HANLON: That's all right, Your Honor. I'll see
25 how I do. And I'll try to be brief.

1 The government, and I don't want to repeat everything
2 the Court's already gone over. But with respect to the relevancy
3 of this, in some respects the government has to kind of reach how
4 the defense wants to present their case because that's the
5 defense argument.

6 THE COURT: Of course.

7 MR. HANLON: We need this to do this and this and this.
8 And part of my response is the defense doesn't really need this
9 to do this and this and this. You can do a very effective cross
10 examination of Will Montgomery by pointing out that in prior
11 court proceedings he never opened his mouth or said one word
12 about the fact that there was this Martin connection to the
13 money. And frankly, that cross examination would be just as
14 persuasive and just as powerful without getting into the niceties
15 of the fact that there was a state trial with different
16 jurisdictional elements.

17 The notion that Mr. Montgomery had any understanding of
18 those differing elements is a little bit preposterous, but I
19 suppose the defense could launch that kind of cross examination
20 simply by pointing out that it was a different hearing with
21 different issues. We don't necessarily have to reach the fact
22 that there was a disposition or conviction in the prior
23 proceeding in which Mr. Montgomery testified, only that he was
24 testifying, it was a prior proceeding, and this is what you were
25 trying to accomplish then and it's different from what you are

1 trying to accomplish now, isn't that right, Mr. Montgomery? I
2 think the cross examination is still possible.

3 The fact of the matter is is that we're sort of trying
4 to construct the sort of relevancy theory here. And the Court
5 has articulated one, while also pointing out that it's sort of a
6 wacky theory which 99 out of 100 cases we'd think no one would
7 try to pursue.

8 THE COURT: Actually, Mr. Lawlor did it in a recent
9 case in front of me.

10 MR. HANLON: And I'm sure --

11 THE COURT: The stakes weren't quite as high.

12 MR. LAWLOR: Little different, Your Honor.

13 THE COURT: Well, the principle is the same. It is not
14 infrequent that a defense lawyer stands up in opening statement
15 or closing argument in the course of cross examination,
16 essentially concedes his or her client's guilt to something or
17 other for the purpose of defeating or combatting guilt on some
18 other count.

19 MR. HANLON: Except, Your Honor, and I keep coming back
20 to this, that's not what the defense is trying to do here. Mr.
21 Gardner is not getting up and conceding guilt. Mr. Gardner wants
22 to get up and says, Well, this is already over, we're wasting our
23 time here.

24 THE COURT: Well, they're not going to be permitted to
25 do that. You see, I agree with you. It bleeds over into issues

1 of instructions and what arguments are permitted.

2 MR. HANLON: And I won't touch on that any more, Your
3 Honor, except to point out that a substantial portion of the
4 defense argument on this point is also based on the fact that the
5 jury's going to be confused and the jury needs to be made to
6 understand this, and the jury is going to infer from the federal
7 prosecution that there's something defective about the state
8 court system. And we need to put in Mr. Gardner's conviction to
9 cure that. That could just as easily, and I would argue more
10 easily, be cured through a Court instruction than if we get into
11 the fact that there's been another court which has disposed of
12 this conviction, which then has to be instructed away. And we've
13 got the possibility for jury instructions both sides.

14 The problem the government sees is really twofold.
15 Number one is a standard 401, 403 analysis. We've got a very
16 attenuated, very abstract, very theoretical kind of analysis.
17 The government argues no relevance. The Court has articulated
18 some relevance.

19 And then we have a very large, substantial 403 problem.
20 Yes, it can be addressed through instructions. But the
21 government would argue that the defense's concerns could far more
22 easily be cured through instructions.

23 It's unusual. It's odd. And I think it's going to be
24 extremely confusing for that jury to be told that there's been a
25 state conviction on one of these cases and then have to consider

1 the merits of the federal prosecution. Frankly, the jury's going
2 to infer we've been wasting their time for six weeks.

3 THE COURT: Actually, the jury already knows, as Mr.
4 Coburn and Mr. Kurland have pointed out, that these defendants
5 have been convicted of a number of offenses and found not guilty
6 of a number of offenses and some charges have been nol prossed.

7 I mean, that's a very important piece of their
8 argument.

9 MR. HANLON: That is true, and the government did
10 resist the admission of that. We got into it because the State,
11 because the defense teams wanted it. The jury's heard about some
12 old gun cases, some old drug cases during the 1990's, not a
13 murder, which is one of the predicate racketeering acts in the
14 case. There is, respectfully, a difference.

15 There's one lingering concern the government has here,
16 Your Honor.

17 THE COURT: Okay.

18 MR. HANLON: The Court, I think properly, voir dired
19 Mr. Gardner earlier today about whether or not he was consenting
20 to this strategy. I think defense counsel have almost certainly
21 addressed it with him.

22 Mr. Coburn, I think, in candor indicated he had some
23 discussion, hadn't gotten what he would necessarily expect to get
24 from a client in a normal position, but they talked about it.

25 When the Court attempted to voir dire Mr. Gardner about

1 this, he gave the flesh and blood speech. The government's
2 concern here is that this is the type of thing, telling a jury
3 that I've been convicted of a murder is the kind of thing that
4 normally we would want an extensive voir dire from the defendant
5 about, to the point of consent.

6 And the problem that the government foresees, if it's
7 six months, a year from now, after he's been sitting in jail for
8 a while, Mr. Gardner checks out of the flesh and blood theory and
9 decides, you know what, that was a bad strategy, he's going to be
10 able to file a 2255, and there's not going to be a record here
11 that he consented to it.

12 THE COURT: Believe me, the least thing I'm worried
13 about in this case is a 2255 claiming ineffective assistance of
14 counsel. That's all I'll say about that.

15 By the way, Mr. Hanlon, thank you for your
16 presentation. Address the fact -- and this will be very
17 challenging for you, but you always rise to the challenge --
18 address the fact that I don't even know who the defense witnesses
19 are for Mr. Gardner. How do I even know that they're not going
20 to bring in a witness who's going to say that Montgomery is
21 absolutely lying through his teeth about everything he says?

22 MR. HANLON: I guess the Court doesn't know that.

23 THE COURT: And don't I have to allow, in my ruling, I
24 mean, obviously, the 403 analysis, you know, is not symmetrical
25 because, you know, I know everything about the government's case

1 that I want to know. And I have this lengthy proffer from the
2 government, of course, that Mr. Harding submitted under seal, I
3 think even before you got in the case.

4 MR. HANLON: I'm sure it was, Your Honor.

5 THE COURT: But maybe it was shortly afterwards. So I
6 know an awful lot of what's, or I used to know an awful lot of
7 what the government thinks the evidence is going to be. I have
8 no idea what the defense evidence is going to be. And I don't
9 see how I can defer my ruling until the defense case because
10 Montgomery's going to be in here testifying in front of the jury
11 in the next 24, 48 hours.

12 What do you say about that? The fact that I don't have
13 a window into the defense evidence? I have a window into the
14 defense theory. I've heard the opening statements and I've heard
15 the cross examination, but I don't know what their witnesses are.
16 I don't know what their evidence is.

17 MR. HANLON: To the extent that that would be
18 determinative in the Court helping to do a rule 401, 402, Rule
19 403 analysis, it seems to me it would be unfair for the
20 government in assessing the admissibility of defense evidence to
21 entertain the assumption that the defense is going to present
22 evidence the government witnesses are lying and, therefore, I
23 need to be, I need to apply a more generous standard with respect
24 to whether defense evidence is going to come in.

25 If that's a determinative point of view, Mr. Gardner

1 should proffer through his counsel what his evidence is going to
2 be and how it's going to change the relevancy considerations
3 here. And then the Court could take that proffer into
4 consideration, just as you considered our proffer of Will
5 Montgomery's testimony.

6 THE COURT: Thank you. And maybe you need to confer
7 with Mr. Harding on this. When was the first time, to the
8 knowledge of the government prosecutors, that Mr. Montgomery made
9 a statement that the money from the Spence robbery was going to
10 be used to pay Mr. Martin's lawyer?

11 MR. HANLON: I will have to defer.

12 THE COURT: First time anybody heard that. Month and
13 year would be great.

14 (Pause in Proceedings.)

15 MR. HARDING: Well, I was checking the earliest
16 proffers that Mr. Montgomery gave because he talked a great deal
17 about, I'm talking now about the earliest proffers he gave in
18 2002, in August and September of 2002. I'll just read to you, if
19 I may.

20 THE COURT: Somebody's notes of what he said?

21 MR. HARDING: Yeah.

22 THE COURT: Is it your note?

23 MR. HARDING: No. This is --

24 THE COURT: Agent's notes?

25 MR. HARDING: Detective's notes.

1 MR. KURLAND: For the record, Your Honor, we've asked
2 for years for this and the government has not given it to us.

3 MR. HARDING: I told Mr. Kurland this morning, Your
4 Honor, that we will turn these over to him and I have had copies
5 made and we're going to hand them out at the end of the day.
6 They're not witness statements. So they aren't Jencks material.
7 We're just turning them over in an abundance of caution.

8 THE COURT: Good. So these --

9 MR. HARDING: There's no Brady and there's no Giglio in
10 them.

11 THE COURT: So are these handwritten notes that have
12 been reduced to typewritten form?

13 MR. HARDING: Yes. They are reports done by the
14 original detectives who interviewed Mr. Montgomery right after he
15 got arrested.

16 And he told all about Martin, Mitchell, Darryl Bacon,
17 and Mr. Gardner and his activities over the years with these
18 particular defendants. Montgomery advised that they had east
19 side and west side connections. They would go to New York and go
20 down --

21 THE COURT: Slow down, please.

22 MR. HARDING: They would go to New York in Gardner's
23 Honda Accord station wagon or Mitchell's black truck.

24 THE COURT: No. Mr. Harding, please, focus in on the
25 Spence Jones murder.

1 MR. HARDING: He doesn't --

2 THE COURT: My question is when in connection with the
3 Spence Jones murder, the Jones Spence murder, did Mr. Montgomery
4 first tell anybody that the proceeds from that robbery were
5 intended to be used to pay for a lawyer for Mr. Martin or anybody
6 else, for that matter?

7 MR. HARDING: Well, he has told me that from the
8 earliest proffers that I had with him. But I don't have, I can't
9 tell you whether it was in 2003 or 2004.

10 THE COURT: And when was Mr. Gardner convicted?

11 MR. HARDING: In state court?

12 THE COURT: Yes. Anybody have the date at their
13 fingertips?

14 MR. COBURN: It was 2004, Your Honor.

15 THE COURT: When?

16 MR. COBURN: I think September, September, October.

17 THE COURT: September of 2004.

18 MR. HARDING: Your Honor, there's another --

19 THE COURT: So they proceeded with the murder trial
20 after this indictment?

21 MR. HARDING: Yes. They, the County refused to drop
22 their case. We tried to, we were in touch --

23 THE COURT: I'm sure you did.

24 MR. HARDING: In any case --

25 THE COURT: So much for state/federal cooperation.

1 That's the craziest thing I've ever heard in my life. That was,
2 I guess, Ms. O'Connor's swan song, so to speak.

3 MR. HARDING: Judge, there's one other important --

4 THE COURT: And was it a death case?

5 MR. COBURN: It was not, Your Honor.

6 THE COURT: It was not?

7 MR. COBURN: No one really knows why.

8 THE COURT: No one knows why?

9 MR. COBURN: Baltimore County, you would think it would
10 be death penalty.

11 THE COURT: Well, Ms. O'Connor has been very candid in
12 saying that one of the important factors her office took into
13 account is what the victims thought. And I don't know. That's
14 one of the factors. But certainly, they had a policy of seeking
15 it in every case. And there's no question, this qualified.

16 MR. HARDING: I just wanted to point out one other
17 thing, Your Honor.

18 THE COURT: Yes.

19 MR. HARDING: Mr. Martin, Mr. Gardner and Will
20 Montgomery and Aaron Holly were all involved in robbery schemes
21 in April of 2002. And specifically, they were going to rob this
22 drug dealer by the name of Goose, whom I know I've mentioned to
23 the Court before.

24 THE COURT: Right.

25 MR. HARDING: They also were considering the Darius

1 Spence robbery.

2 THE COURT: Right.

3 MR. HARDING: It was Mr. Martin's arrest that thwarted
4 the plan to do Goose because it was Mr. Martin who had the
5 connection to Goose.

6 THE COURT: Right. I remember that.

7 MR. HARDING: So they focused more on the Darius Spence
8 murder and with greater urgency.

9 THE COURT: So you see how that really, I think,
10 redounds to the benefit of Mr. Gardner, because if Martin and
11 Montgomery and Gardner were going to commit a robbery of a drug
12 dealer before Martin got arrested, and I assume there's going to
13 be testimony about that because it's certainly consistent with
14 the defense position, nothing changed.

15 So Martin gets arrested, so yeah, we'll use some of the
16 money to help out Martin. Okay. Let me, first of all --

17 MR. HARDING: No. Something did change. Montgomery's
18 going to make it very clear that Gardner had a much greater sense
19 of urgency about this once Martin got arrested, because he needed
20 to get money to help Martin. That's Montgomery's understanding
21 of what the situation was. Not that Gardner said that in so many
22 words. But Gardner was much more hepped up about getting this
23 robbery done. And eventually, when they did do the robbery, it
24 was because Gardner insisted it was time to move. So it did have
25 an impact.

1 And there was, the fact that they needed money for
2 Martin was an important motivation, not only according to Mr.
3 Montgomery --

4 THE COURT: I'm sorry.

5 MR. HARDING: According to Mr. Reynolds, who heard
6 about all this from Mr. Gardner.

7 THE COURT: And what was the motivation for robbing
8 Goose before Martin got arrested?

9 MR. HARDING: That was just to make money.

10 THE COURT: Well, you see, that's kind of my point.
11 Okay. Ms. Rhodes -- before I hear from you, Mr. Kurland -- do
12 you have any view you wish to express on this question?

13 MR. LAWLOR: Your Honor, I mean, we would object. And
14 part of the issue is, you know, and I guess my objection is a
15 little bit unknown because I don't know, and the government hit
16 on this, whether they intend to, whether Mr. Gardner intends to
17 seek to introduce only the fact of the conviction or whether he's
18 conceding his factual involvement in that crime.

19 Either way, we object on the basis that they're
20 essentially conceding a portion of the government's theory. And
21 some of that stain is going to leak on to us.

22 THE COURT: Now, what would be your position if Mr.
23 Gardner were to testify to these facts? Would you have a ground
24 of objection?

25 MR. LAWLOR: I don't think even if he were to testify,

1 Your Honor, "I have been convicted in state court" would be a
2 relevant question or answer. I'm trying to think of what, what
3 issue that would support that's relevant to this trial.

4 THE COURT: It tends to make, if Mr. Gardner, again,
5 and I'm just talking hypothetically here, if Mr. Gardner were to
6 take the stand and say, Yes, I did the murder, yes, I intended to
7 commit the robbery, I wanted to take a vacation to the Bahamas,
8 and that was the only reason I went in that apartment with Mr.
9 Holly, and --

10 MR. LAWLOR: I did it but it wasn't in furtherance of
11 the enterprise.

12 THE COURT: Exactly. There is no enterprise. I was
13 never a part of any enterprise. I wasn't trying to get a
14 promotion. I was just doing a robbery. I've done them before.
15 I intended to do them some more if I had been acquitted.

16 MR. LAWLOR: Right.

17 THE COURT: And this, I don't even know why I'm here.

18 MR. LAWLOR: Yeah, I agree. I think you're right. I
19 think that would be admissible. I agree.

20 THE COURT: All right. So you would have no objection?

21 MR. LAWLOR: No.

22 THE COURT: I mean, you would have no objection --

23 MR. LAWLOR: No, I don't think I would have a basis.

24 THE COURT: -- that could be sustained.

25 MR. LAWLOR: Correct. I agree. And I think Mr.

1 Kurland just clarified that they don't intend to concede his
2 involvement in that which, candidly, I think takes away from our
3 position, in all candor.

4 THE COURT: Well, I'm going to have to hear from Mr.
5 Kurland. I don't know how in the world you tell the jury, I've
6 been convicted of first degree murder but I'm not conceding my
7 involvement in that offense. I mean, that's part of the
8 complication here that, frankly, is causing me to put the brakes
9 on. That's why I tried to leave those subsidiary questions to
10 one side because, frankly, those are the tougher issues than this
11 one, although this one is tough, too. All right.

12 But for the record, Mr. Mitchell objects?

13 MR. LAWLOR: Correct, Your Honor. I guess maybe the
14 better way would be to double back. But if the Court is going to
15 permit this, we would like to be heard separately on the issue of
16 limiting instructions.

17 THE COURT: Of course. Mr. Kurland, Mr. Pyne. I'm
18 sorry. Mr. Flannery.

19 MR. FLANNERY: Mr. Martin and I would follow Mr.
20 Lawlor's objection as well.

21 THE COURT: So you object.

22 MR. FLANNERY: We object on the same ground, the
23 spillover effect.

24 THE COURT: Because of the spillover effect this could
25 have on Mr. Martin -- Mr. Harris. Mr. Crowe?

1 MR. CROWE: Your Honor, I've been over this question
2 quite a few times in the last two years and a number of times
3 just today. And I'm afraid I have to take the coward's way out
4 on this. I don't know what my position will be and I don't know
5 that I should be asked to state what the position would be until
6 the government's case is concluded.

7 It seems to me that this is evidence that could be
8 presented in Mr. Gardner's case.

9 THE COURT: All right. Okay. So I guess, I appreciate
10 that. But my point is, are you now objecting on behalf of Mr. --
11 I mean, this is one of those instances when I'm not, I've got to
12 hear individually from everybody as to whether they're objecting
13 or not.

14 MR. CROWE: Yes.

15 THE COURT: You are objecting?

16 MR. CROWE: But I may not be in two weeks.

17 THE COURT: Okay. All right. Mr. Kurland? If you
18 would, Mr. Kurland, start with, as I realize it's 4:25, start
19 with the most coherent explication of the relevance that you can
20 muster.

21 MR. KURLAND: All right, Your Honor. This is three
22 years' worth of work. First of all, at the outset, our position
23 is we want admitted into evidence the fact of Mr. Gardner's
24 conviction and the fact he is serving a life sentence.

25 THE COURT: Do you want evidence that it's a jury

1 verdict?

2 MR. KURLAND: Well, that's going to come out because,
3 contrary to Mr. Hanlon's antiseptic manner in which he would
4 cross examine the witness if he were a hypothetical defense
5 counsel, it is going to be unavoidable. And the Court has
6 alluded to it, with respect to any competent cross examination of
7 Mr. Montgomery, that Mr. Montgomery testified, not at a
8 proceeding, in a state trial, received a substantial benefit from
9 delivering the goods in that first trial, and he expects a
10 substantial benefit in addition to delivering the goods here,
11 which is the manufacturing of the federal jurisdiction.

12 THE COURT: So your point is, and I think I get it,
13 your point is that Montgomery's motivation was, shall we say,
14 heightened because he wasn't just sitting in front of some judge
15 on some Motion to Suppress or something but, in fact, he was
16 doing exactly what he's going to do in this courtroom, and that
17 is, sit in front of 12 people, look them in the eye, actually or
18 figuratively, and essentially sell his credibility to that group
19 of 12 citizens?

20 MR. KURLAND: Yes, Your Honor. And in addition to
21 that --

22 THE COURT: So in other words, you want this jury to
23 know that Mr. Montgomery testified in front of a jury?

24 MR. KURLAND: Absolutely.

25 THE COURT: And that that jury bought his testimony?

1 MR. KURLAND: Yes. Yes.

2 THE COURT: And thus a guilty verdict?

3 MR. KURLAND: Largely because the story that he is
4 going to tell today is flatly -- I take that back. The story
5 that he is going to tell in this trial, and this is consistent
6 with all the representations of the government, is, it isn't just
7 a matter of him testifying to details that weren't important in
8 the state trial, his testimony in this trial is going to be
9 flatly inconsistent in several respects with his testimony in the
10 state trial.

11 THE COURT: And your source of that is to compare what?
12 His trial testimony and his grand jury testimony, or his trial
13 testimony, DEA-6? What is it?

14 MR. KURLAND: Okay. The sources of that, of the
15 inconsistency is his grand jury transcripts, which the Court has
16 already looked at, at least in part with respect to some earlier
17 issue.

18 THE COURT: I don't remember what it was, frankly.

19 MR. KURLAND: His grand jury testimony, his trial, his
20 state court trial testimony, and one recorded proffer that we,
21 that the government has given us, that was done not on the dates
22 that Mr. Harding is going to give us, these earlier things that
23 are non-Jencks according to the government, but on January 22nd,
24 2003, there was a recorded proffer. We have the actual tape
25 recording of it.

1 And on this particular issue of the motivation, he
2 says -- the government's had this for years -- a totally
3 different motivation as to why Mr. Gardner got involved that has
4 nothing to do with money for, for lawyers.

5 So we have written documentation which we filed our 807
6 motion on that we want this admitted for the truth of the matter
7 asserted; that according to Mr. Montgomery, Mr. Gardner has
8 already offered to the government several years ago an entirely
9 different version as to why Mr. Gardner wanted the money that had
10 nothing to do with legal fees.

11 Now, before I get into the other point -- I'll read it.
12 Okay. Fine. Okay. It says --

13 THE COURT: Slowly, slow.

14 MR. KURLAND: DS, which I guess is Stocksdale, who's
15 the state prosecutor. Was there a particular reason --

16 THE COURT: I'm sorry. What are you reading from?

17 MR. KURLAND: I'm reading from a transcript which has
18 already been provided to the government when we argued the
19 coconspirator issue. I'm sorry. Already provided to the Court.
20 This is January 22nd, 2003. It's a recorded, transcribed, it's a
21 transcript.

22 THE COURT: A proffered session.

23 MR. KURLAND: Of a proffer session.

24 THE COURT: And there's an assistant state's attorney
25 present?

1 MR. KURLAND: And I believe Mr. Harding is present as
2 well because --

3 THE COURT: He says he's not.

4 MR. KURLAND: I'm sorry. It says, We're at the U.S.
5 Attorney's office. Present is Montgomery, his attorney,
6 Detective Tincher, and myself and Dean Stocksdales. So there's a
7 U.S. attorney present.

8 MR. HARDING: There is no U.S. attorney present. He
9 was brought over to this office because Montgomery was a federal
10 prisoner and it was just more convenient. The only people
11 present were the Baltimore County.

12 THE COURT: All right.

13 MR. KURLAND: DS, which I assume is State's Attorney
14 Stocksdales. Was there a particular reason that Gardner was or
15 was part of this plan, the robbery of Darius Spence? E told him
16 about it.

17 THE COURT: I'm sorry?

18 MR. KURLAND: Your Honor, E, which is Holly, told him,
19 Gardner, about it, that he had taken a nice fall around this
20 time. Stocksdales: And when you say he took a nice fall, who are
21 you referring to? Montgomery, Goo, which is Mr. Gardner. And
22 what do you mean, he took a nice fall? He lost a couple of
23 thousand.

24 So the testimony that we have which we argue under 807
25 should come in, not simply to impeach but as the truth of the

1 matter asserted.

2 THE COURT: And what's the date of that proffer?

3 MR. KURLAND: January 22nd, 2003. And it's going to be
4 our position, I feel a little bit uncomfortable revealing too
5 much of the defense strategy, if it's necessary, it's necessary,
6 and some of this has already come out in the copious pleadings
7 over the past several years, and that is is that Mr. Montgomery
8 is not a stupid man. He shapes it. He understands what's going
9 on. All of these guys have testified, they fear federal
10 prosecution because the fed sentences are way harder.

11 We heard Bacon testify that he pled in state court
12 because he didn't want to deal with federal court. These guys
13 aren't stupid. Montgomery's not stupid. He's willing to shape
14 the testimony on time, on dates, on motivations, whatever,
15 because he wants, he said, I think it's in Giganti's affidavit,
16 he fully expects to get more credit by delivering the goods once
17 again in this different form.

18 So with respect to the specific question the Court
19 answered, it is vitally necessary in any competent cross
20 examination of Mr. Montgomery for all of this to come out,
21 including the fact that he testified at his state trial and the
22 fact that Mr. Gardner was convicted.

23 So that's separate, that's one substantial relevancy
24 issue as well. There's no way in any limitation, with all due
25 respect, any limitation on Mr. Montgomery's cross examination, to

1 artificially constrain it to prior proceedings, so on and so
2 forth.

3 I got one of my research assistants up there. I'll
4 have him go get the cases. It adversely and unconstitutionally
5 impacts our right to a full and effective cross examination. So
6 that's reason alone that this is necessary.

7 Now, the second thing is, it's solely Mr. Montgomery's
8 shaped testimony about this connection for, for lawyers. I have
9 looked at Mr. Reynolds' grand jury testimony. Mr. Benson's a
10 good guy here. But this testimony or the proffer that Mr.
11 Harding asserted here is the summary testimony of Detective
12 Benson. The actual testimony of Mr. Reynolds does not say that.
13 That connection is fictitious. It does not exist. It's the
14 heart of our defense.

15 The sole witness, the sole witness that is going to tie
16 up the loose ends and make the Gardner, and make the Spence plan
17 robbery which, after all, there's also this other derivation
18 which Mr. Montgomery has testified to. This was some sort of
19 revenge stuff because Momma was sleeping with, with Tonya Spence.
20 And according to Montgomery, Montgomery comes up with this idea
21 by himself. It isn't just, Hey, we're going to rob Goose, maybe
22 we'll rob Darius. Wait a minute, Martin's arrested, so now the
23 Goose plan can't work because he's working at the sporting store,
24 he wasn't going to get close, so let's shift to plan B.

25 Mr. Montgomery has testified under oath several times,

1 there's a totally different derivation, and that isn't what
2 happened. What happened according to Montgomery under oath at
3 the state court trial is that he's approached by Darius Spence to
4 go beat up Mama and then he decides to play one against the
5 other. Finds out that Mama is sleeping with, sleeping with Tonya
6 Spence. So he decides, Hey, you know what? Since somebody's
7 going to shoot somebody, might as well hire me to kill Darius.
8 Because I've checked out Mama and Mama's cool, I'm not going to
9 kill Mama.

10 So Darius Spence, that's how he gets involved. And
11 according to his under-oath testimony, he recruits Holly, who
12 then recruits Gardner. And Gardner gets involved because,
13 according to this proffer that he couldn't lie about, he's lost a
14 couple of thousand. So that needs to come out. That's going to
15 come out.

16 So the way that the government has presented it here,
17 that's their spin and that's what it is. They're allowed to make
18 the arguments or the inferences, but so are we. But on this,
19 with respect to Mr. Reynolds saying that the money is for
20 lawyers, that isn't what he testified in the grand jury. That is
21 what, what Sergeant Benson says as a summary witness. But he's
22 not going to testify to that at this trial.

23 That's why Mr. Harding, I'm not going to say that's why
24 Mr. Harding resisted giving us the summary transcripts, but as a
25 former Assistant U.S. attorney, I understand prosecutors don't

1 like to give summary witness transcripts, particularly when
2 there's been succeeding grand juries, because there's all sorts
3 of mistakes. We saw one with Giganti. Or an alleged mistake
4 with regard to where the palm print is.

5 I understand that. I'm not impugning anybody's
6 credibility. But believe me, Mr. Coburn and myself, we've read
7 this a million times over. And on this particular detail, we're
8 sort of idiot savants with respect to this.

9 THE COURT: Give me a preview, very, very short preview
10 of your closing argument. I'm not going to ask you about any
11 evidence. But what are you going to do with this? That's the
12 question.

13 MR. KURLAND: Right. Okay. First all, Your Honor, we
14 submitted with our motion some proposed jury instructions. And I
15 understand the Court's discussion. But we have no intention of
16 making any sort of improper, unconstitutional or unlawful
17 arguments concerning the misuse of the evidence.

18 THE COURT: You're not going to make a jury
19 nullification argument.

20 MR. KURLAND: Absolutely not.

21 THE COURT: I understand that.

22 MR. KURLAND: Absolutely not.

23 THE COURT: What are you going to argue?

24 MR. KURLAND: A couple of things. One is that the
25 government has made a big deal about the incarceration status of

1 these defendants and the fact that it is, according to them, it
2 is, I won't say insignificant, but apparently people are in jail,
3 and then they come out of jail and the thing continues for a long
4 period of time.

5 And it's true that the government initially objected to
6 the, to the testimony of the results of those, of those many drug
7 charges and many gun charges. Now, they sort of pooh-pah it by
8 saying, That's drugs and guns, it's not murder. But the fact is
9 those are still predicate acts in the RICO count, just like the
10 murders are.

11 So while the murder is different at least in a
12 quantitative sense, in a qualitative sense all of those earlier
13 drug cases and gun cases are part and parcel of the charged
14 conspiracy and the scope of the enterprise.

15 Now, with respect to the incarceration status, we are
16 entitled to argue that Shawn Gardner has been incarcerated in a
17 state prison since X date. Again, the jury can take that for
18 what it's worth. That is some evidence. The Court cannot direct
19 a verdict saying just because they're in prison, that means
20 they're out of the conspiracy. That's a factual issue for the
21 jury to decide.

22 The way that the government has indicted the case,
23 they've chosen to extend the period to 2006, which is three or
24 four years after he has been incarcerated and two years after he
25 was convicted and serving a life without possibility of parole

1 state court sentence.

2 He had nothing to do with the stuff happening with
3 Supermax and Stop Snitching One, Two, you know, Roman numeral 50,
4 whatever. He had nothing to do with that. We're entitled to
5 make that argument. We're entitled to say that he is in a
6 separate institution from the other defendants. And that is a
7 factual issue that goes to the core of what's going on.

8 Now, in addition to that, it is legitimate to argue --
9 and this is not a jury nullification argument -- the Court has
10 already given an instruction, I think we attached that to the
11 motion, the early instruction you gave when the jury first heard
12 evidence of the, of the evidence concerning some of the drug
13 charges and some of the gun charges, and sometimes the police
14 officers knew the resolution or not.

15 It's a legitimate argument to make, consistent with a
16 proposed dual sovereignty instruction which we submitted and,
17 again, it's a rough draft, obviously, the government's going to
18 have their input and I suspect that will take a long time in kind
19 of hashing out what's going on, but it's a legitimate argument to
20 make that the defendants, or at least Mr. Gardner, has been dealt
21 with, in the 11 year period of this alleged RICO conspiracy.
22 He's been arrested a lot. He's been caught by the police with
23 drugs and guns. And he has gone to jail for various amounts of
24 time for state crimes, including the murder.

25 And with respect to whether or not there is a, this

1 particular murder was part of a federal RICO enterprise, it's a
2 fair argument to say, consistent with a proper jury instruction
3 that accurately states the law, that these are state crimes that
4 have been dealt with in state court.

5 And there was one other thing -- let me just take a
6 look at my notes. There was one other thing that I wanted to
7 say.

8 Oh, also, Mr. Gardner's, fact that he was convicted in
9 state court was presented by these prosecutors, not Mr. Hanlon
10 personally, but by their office, that was presented to the grand
11 jury. For the government to come in here now --

12 THE COURT: Presented to the grand jury?

13 MR. KURLAND: Yes, it was.

14 THE COURT: In what context?

15 MR. KURLAND: Officer Niedermeier testified to it. So
16 for them to argue that it's irrelevant, along those lines,
17 suggested we're 2555 (sic) waiting to happen, I would ask, then,
18 that the indictment be dismissed as to Mr. Gardner. Because they
19 presented -- if it's improper, they presented it to the grand
20 jury.

21 THE COURT: How are you going to, if you are going to,
22 not concede his guilt?

23 MR. KURLAND: Well, Your Honor, again, I feel
24 uncomfortable --

25 THE COURT: Okay. If you can't answer it.

1 MR. KURLAND: No, no. Put it this way. The way that
2 we plan to do it is to elicit evidence that Mr. Gardner was
3 convicted in state court and is serving a life without
4 possibility of parole sentence. Obviously, just like
5 inconsistent defenses, and I know what Justice Scalia says about
6 that, so on, so forth, obviously, that puts a responsibility on
7 Mr. Coburn and myself not to be totally self-defeating in the
8 manner in which we examine and cross examine some witnesses.

9 We are mindful of that issue but we do not have to
10 stand up here and concede or stipulate that he did it. We
11 understand --

12 THE COURT: What's the status of his appeal?

13 MR. KURLAND: His direct appeal has been denied.

14 THE COURT: Well, it's not denied. You mean the
15 judgment was affirmed?

16 MR. KURLAND: Yeah. The conviction was affirmed and
17 the, the writ of certiorari to the highest court of Maryland was
18 not granted. So that is a final conviction on direct appeal.

19 THE COURT: Is there a petition for cert being filed by
20 the Public Defender's Office with the Supreme Court?

21 MR. KURLAND: With the U.S. Supreme Court?

22 THE COURT: Yes.

23 MR. KURLAND: No.

24 THE COURT: You sure?

25 MR. KURLAND: Positive.

1 THE COURT: Has the time expired?

2 MR. KURLAND: I believe so. Yes.

3 MR. COBURN: I think it has, Your Honor. They wouldn't
4 even, they refused to go the Maryland Court of Appeals.

5 THE COURT: Excuse me?

6 MR. COBURN: The PD even refused to go to the Maryland
7 Court of Appeals.

8 THE COURT: It was a pro se petition?

9 MR. COBURN: Yes.

10 MR. KURLAND: Yes.

11 THE COURT: So what happens if, and you told me
12 earlier, in fact, concerned about Mr. Gardner's papers back in
13 the DOC, he's going to file or he has filed a post-conviction.

14 MR. KURLAND: Yes.

15 THE COURT: So now what happens if two weeks from now,
16 you know, Baltimore County schedules a hearing on the
17 post-conviction? Does the government then get to present to the
18 jury, Oh, and by way -- or even apart from scheduling the post
19 conviction, does the government now get to show the jury that it
20 may be a quote-unquote "final conviction" but, in fact, under
21 Maryland law there are post-conviction proceedings, to say
22 nothing of a 2254 in Federal Court somewhere down the line?

23 MR. KURLAND: Well, one, factually, I mean, if that
24 happens, I would have to talk about this it to Mr. Coburn. But
25 factually, if that would happen, I wouldn't have a problem with

1 the government going through that. I think that would be 403
2 and --

3 THE COURT: But see, now I'm in the grips of 403 in a
4 way that I can't breathe any more.

5 MR. KURLAND: It's not going to happen. The petition
6 hasn't even been filed yet. But see, we're just, look, all of
7 the other prior state court results have been in. All we, not
8 all we want because separate and apart from the clearing up the
9 misleading impression, that the jury's going to think this is a
10 revolving justice system that just spits out state court
11 defendants, Montgomery's credibility issue alone requires us to
12 inquire into this. And that makes it sui generis.

13 These complaints from my esteemed colleagues here as
14 codefendants, I mean, they're concerned about evidentiary
15 spillover. That's just a canard. There's no discussion as to
16 what that really means. That's what everybody says. Mr. Gardner
17 is different.

18 Mr. Gardner has, in fact, been convicted of a charge
19 which, in this count or in this indictment, he's the only one
20 charged. So I don't understand their evidentiary spillover.

21 To the extent that the jury might think that they were
22 all convicted of the other murders, that actually helps them in
23 my view. But that isn't their concern.

24 THE COURT: But this is a racketeering act in Count
25 One.

1 MR. KURLAND: Yes.

2 THE COURT: And so if the jury finds beyond a
3 reasonable doubt that Mr. Gardner committed this murder and that
4 it was an act of racketeering, then, then these three defendants
5 are 50% home because the government's got to prove two --

6 MR. KURLAND: But our defense is that, Your Honor,
7 one -- two things. One, Mr. Gardner's, I understand the
8 racketeering charge. He's the only defendant charged in the
9 substantive counts. And two, our defense is, whatever his
10 involvement was, it had nothing to do with furthering his
11 position in this enterprise that we're going to argue doesn't
12 exist.

13 THE COURT: All right.

14 MR. KURLAND: So the fact of Mr. Gardner's conviction
15 does not, does not automatically redound to the detriment of any
16 of these defendants.

17 THE COURT: I think it does. I absolutely believe it
18 does, Mr. Kurland.

19 MR. KURLAND: Well, then, I guess, then we should be
20 severed, then.

21 THE COURT: You know, how many times am I going to say
22 this? I did sever.

23 MR. KURLAND: Yes.

24 THE COURT: I did sever. And Mr. Gardner and his
25 codefendants absolutely spit in the Court's face, to use a

1 graphic term, in granting them that benefit. Now, that's not
2 your fault. That's not Mr. Coburn's fault. It's nobody's fault
3 but the defendants.

4 Mr. Gardner was scheduled for a trial by himself in the
5 fall of 2006.

6 MR. KURLAND: That's correct, Your Honor.

7 THE COURT: And you know, and Mr. Coburn knows more
8 than any other defendant, I absolutely broke my back trying to
9 get Mr. Gardner to see the serious mistake he was making. And I
10 ended up virtually getting cussed out by his family because I had
11 the temerity to bring them in to the courtroom ex parte to try to
12 make sense to Mr. Gardner, what he was doing to himself.

13 MR. KURLAND: Judge, the Court has gone above and
14 beyond --

15 THE COURT: I know, I don't need you to --

16 MR. KURLAND: Your Honor, one other thing. I think
17 this, my whole purpose, everything I say before the podium, I
18 want to make sure my argument is stronger than it was before I
19 got up.

20 THE COURT: All right. I'll let you strengthen it up,
21 but briefly.

22 MR. KURLAND: Well, the one last thing is that, is that
23 there's no question, as the Court has pointed out, that if Mr.
24 Gardner were to testify, he would be able to say, I'm now
25 currently living at the state correctional facility in Jessup,

1 Maryland and that's where I'm under a life sentence. That
2 clearly is admissible evidence and there are --

3 THE COURT: He didn't testify in the state trial.

4 MR. KURLAND: He did not testify in the state court
5 trial. And again, there are a legion of cases which say that a
6 defendant cannot be punished for exercising his Fifth Amendment
7 right. If the evidence could come in if he testifies, then it's
8 admissible.

9 THE COURT: No, that's not true. I set up that red
10 herring under my colloquy --

11 MR. KURLAND: Judge, I'll get to, I'll get to the
12 cases. There can be no requirement that a defendant could only
13 put on a defense if he testifies.

14 THE COURT: No. It's not a question of putting on a
15 defense. It's a question of the relevance and the probative
16 value of the evidence.

17 MR. KURLAND: Again, Montgomery's credibility,
18 Montgomery's credibility has to be cross examined in this manner.

19 THE COURT: I'm going to think about Montgomery some
20 more overnight. I'm not sure you can't achieve what you need to
21 achieve in front of this jury with Mr. Montgomery without
22 presenting evidence that Mr. Gardner has been convicted.

23 I will even allow you, because I think you're
24 absolutely entitled, to have this jury know that Mr. Montgomery,
25 if you choose to do so, Mr. Montgomery testified in front of a

1 prior jury.

2 Now, I appreciate there's a risk that if this jury, the
3 federal jury doesn't learn the outcome of that case, there could
4 be some residual prejudice if a juror were to believe that Mr.
5 Gardner has been tried in state court and acquitted or a mistrial
6 or something. But again, as I said to the government, I think
7 juries follow the Court's instructions. It's quite clear in this
8 case. The Court's instructions are going to be more than a
9 hundred pages. And each juror will have his or her own separate
10 copy, etc.

11 So just like I can cure prejudice or unnecessary
12 confusion of the issues through instructions, if I admit the
13 evidence, I think the government's got a good argument that you
14 can pretty much get what you want as well in cross examining Mr.
15 Montgomery. And I don't think it's burdening Mr. Gardner's right
16 to testify at all. But under the circumstances, Mr. Gardner
17 would be free to make that decision when and if the time comes.

18 MR. KURLAND: Well, Judge, let me say this. I hate
19 lawyers -- I do mostly appeals. I hate lawyers who say they got
20 a great issue on appeal. This is a great one here.

21 THE COURT: And I don't try cases to harmless error,
22 either. So you and I are on the same page on that.

23 MR. KURLAND: Exactly. But the other thing, Judge, and
24 this is the last thing I'll say, is that, I had some profound
25 point on this. That --

1 THE COURT: Mr. Coburn -- maybe it will come back to
2 you in a second. Why don't you let Mr. Coburn pick up?

3 MR. COBURN: Thank you so much, Your Honor. I don't
4 mean to gang up on the government but they both spoke to this.
5 So I appreciate Your Honor allowing me just a minute.

6 The one scenario that I'm most scared of in this case
7 is the one that Your Honor just referred to, which is when I
8 cross examine Montgomery, I've got to establish the fact that
9 he's testifying before a jury on guilt/innocence, you know, with
10 respect to the Tonya Spence homicide. Otherwise, I can't get at
11 his motive or the possible benefit that would inure to him and so
12 on.

13 So then the jury finds out that there's already been a
14 trial on guilt/innocence with respect to Tonya Spence, with Shawn
15 Gardner as a defendant, but they don't find out what happens.

16 I know, I mean, I know Your Honor will fashion the best
17 possible instruction with respect to that and give it in the best
18 possible way. But we've got a very intelligent, sophisticated
19 jury here and they know, at least there are going to be some
20 people on that jury that are going to know that there is a
21 history, I mean, it happens.

22 Particularly like in the civil rights context. Your
23 Honor might remember Lemerick Nelson up in Brooklyn, you know,
24 got acquitted in state court. Then there's a following federal
25 prosecution. I think the same thing happened with Kuhn in

1 California.

2 THE COURT: I'm surprising you didn't mention OJ.

3 MR. COBURN: OJ, you know, a perfect example. The
4 federal government kind of leaps into the breach when the state
5 system doesn't work.

6 THE COURT: Well, OJ is obviously not the state/federal
7 thing. I take your point, Mr. Coburn.

8 MR. KURLAND: Your Honor, I remembered the last thing.

9 THE COURT: Yes.

10 MR. KURLAND: That is, again, the cat's already out of
11 the bag with respect -- and they are serious charges. The drug
12 charges and gun charges which make up predicate acts are serious
13 charges. The jury has already heard that these things are
14 handled by the state court and they're able to hear whether or
15 not it was nol prossed or convicted. So to artificially isolate
16 out this particular conviction.

17 And again, the other defendants are in a different
18 situation because they weren't tried in state court. Just
19 amplifying what Mr. Coburn said. If they hear about, that even
20 if you say, You are not to consider so on, so forth, we filed an
21 earlier brief on this particular issue. And the default position
22 is, not the default position, but the general presumption is, is
23 that juries, even with instructions, are often bound to assume
24 that, that the earlier prosecution, you hear about it and don't
25 know the results, resulted in either an acquittal or mistrial and

1 that's what he's doing here.

2 So I think on the balance, on the 403 balance, not just
3 the government's 403 balance, but the other co-defendants, I
4 think the balance has to come down on permitting the evidence to
5 come in.

6 THE COURT: All right. Thank you, Mr. Kurland. Did
7 you want to have a final word, Mr. Hanlon?

8 MR. HANLON: Only to say, Your Honor, I'll leave the
9 Court with this. We agree that it's an intelligent jury. We
10 agree that it's a jury that's going to follow instructions. Our
11 solution is, let the defense do their cross examination. Their
12 cross examination, defense raises issues that they're concerned
13 about. Instruct the jury that the disposition of the state case
14 has no relevance. And that solves the problem.

15 THE COURT: All right. Thank you, Mr. Hanlon.

16 I'm going to think about this some more overnight and
17 take another look at the record. And I'm going to give counsel
18 literally no more than 90 seconds tomorrow morning before we
19 start to add anything that you wish you'd said this afternoon.

20 And I would prefer if something comes to you, if you're
21 able to do so, to just submit something through ECF.

22 As I sit here, I am leaning somewhat strongly in the
23 direction of prohibiting this evidence. While I have a keen
24 respect for Mr. Gardner's Sixth Amendment right to put on a
25 defense, putting on a defense doesn't necessarily mean

1 introducing all evidence and it doesn't even mean necessarily
2 introducing all relevant evidence or all evidence in a particular
3 form.

4 I am concerned about the effect of that evidence on the
5 other defendants. I am concerned about the traditional Rule 403
6 factors, confusion of the issues, waste of time. I don't really
7 perceive much in the way of unfairness to the government, but I
8 do perceive the potential for significant unfairness to the
9 co-defendants.

10 I'm concerned about the bootstrapping quality of the
11 argument. And I don't use that term pejoratively, but Mr.
12 Kurland, Mr. Coburn, I think are very clear, they don't want the
13 conviction solely in. That would hurt more than it would help
14 even Mr. Gardner. So they have to have both, I mean, it seems to
15 me, they have to have both the conviction and the sentence in
16 before the jury. And once we go there, it is beyond me how in
17 any coherent way you can maintain innocence through a
18 non-concession of guilt when you've told the jury or had the
19 Court tell the jury or conceded in front of the jury that there
20 has been a trial, Montgomery testified, a jury listened to that
21 evidence as well as other evidence, and found beyond a reasonable
22 doubt that Mr. Gardner had committed this murder or, and/or aided
23 and abetted in the commission of this murder and/or conspired to
24 commit this murder.

25 And I believe stipulations can be fashioned and a

1 course of cross examination can be fashioned so that Mr. Gardner
2 can get whatever he needs in the way of impeaching evidence as to
3 Mr. Montgomery in front of this jury without walking out on this
4 plank, because whatever else I may say or think about 2255, or
5 anything else for that matter, it is a plank. And we shouldn't
6 walk planks other than when there's an absolute, absolute need to
7 do so.

8 So that's my preliminary view. As I say, I'll give
9 counsel 90 seconds tomorrow morning. Or if you want to submit
10 something tonight, I will read it.

11 But I'm going to prohibit it, understanding -- I am
12 likely to prohibit it, understanding full well that if Mr.
13 Gardner were to take the stand, that still doesn't open the door
14 to anything Mr. Gardner wants to say. But as I suggested to Mr.
15 Hanlon, it would be, it seems to me, pretty extraordinary for me
16 to prohibit Mr. Gardner from bringing this information before the
17 jury if he chose to do so either on direct or cross examination.
18 And of course, that would afford his codefendants the opportunity
19 to cross examine him, and that cures that problem.

20 So Mr. Coburn, Mr. Kurland, thank you very much. It's
21 an absolutely fascinating issue, certainly not one that I've ever
22 encountered, certainly not in this way at this time in this
23 context. But that's the Court's preliminary view.

24 All right. Thank you all very much. See you 9:30
25 tomorrow.

(Conclusion of Proceedings at 4:53 p.m.)

WITNESS: CHRISTOPHER DOBROPOLSKI

DIRECT EXAMINATION BY MR. HARDING

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CROSS EXAMINATION BY MR. MARTIN

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REPORTER'S CERTIFICATE

I, Mary M. Zajac, do hereby certify that I recorded stenographically the proceedings in the matter of USA v. Willie Mitchell, et al., Case Number(s) AMD-04-029, on October 6, 2008.

I further certify that the foregoing pages constitute the official transcript of proceedings as transcribed by me to the within matter in a complete and accurate manner.

In Witness Whereof, I have hereunto affixed my signature this _____ day of _____, 2009.

Mary M. Zajac,
Official Court Reporter

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